
TEXAS REGISTER

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*Zoe Delafosse
9th Grade*

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
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Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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Requests for Opinion

RQ-0583-GA

Requestor:

The Honorable Bill Moore

Johnson County Attorney

Guinn Justice Center

204 South Buffalo Avenue

Fourth Floor, Suite 410

Cleburne, Texas 76033-5404

Re: Responsibility for selection and discontinuance of financial software used by the office of the county auditor (RQ-0583-GA)

Briefs requested by May 28, 2007

RQ-0584-GA

Requestor:

The Honorable Charlie F. Howard

Chair, Committee on Local and Consent Calendars

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Responsibilities of a school district in dealing with student truancy: Clarification of Attorney General Opinion No. GA-0417 (2006) (RQ-0584-GA)

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200701723

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: May 2, 2007

Opinion

Opinion No. GA-0543

The Honorable Royce West

Chair, Committee on Intergovernmental Relations

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether, in light of section 716.101 of the Health and Safety Code, a county may cremate an unidentified deceased pauper's remains (RQ-0551-GA)

S U M M A R Y

Despite its authority to dispose of the body of an unidentified deceased pauper under section 694.002(a) of the Health and Safety Code by cremation, section 716.101 of the same code prohibits a crematory establishment from accepting such remains for cremation. Accordingly, a county may not have the remains of an unidentified pauper cremated.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200701724

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: May 2, 2007

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).
Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes to repeal §355.8301, concerning Reimbursement, and replace it with new §355.8443 to correspond with the language approved by the Centers for Medicare and Medicaid Services (CMS) in the Texas Medicaid State Plan Amendment (06-005-723) related to covered services and reimbursement methodology for School Health and Related Services (SHARS). Since the services are only available to students under the age of 21, HHSC proposes to move the new rule to Division 23, Early and Periodic Screening, Diagnosis and Treatment (EPSDT).

Background and Justification

These services are delivered by school districts to Medicaid-eligible special education students under the age of 21 as required by the Individual with Disabilities Education Improvement Act. School districts fund the nonfederal share of Medicaid for SHARS and receive the federal share for these services. School districts must certify their public expenditures and submit annual cost reports, which are subject to cost reconciliation and settlement processes.

CMS no longer allows school districts, as public entities, to receive reimbursement that is greater than the Medicaid-allowable cost for delivering SHARS. HHSC has been working with CMS for more than a year to agree upon the covered services and related reimbursement methodology for SHARS. The resulting methodology is contained in new §355.8443. Since §355.8301 explained the processes for reimbursement under SHARS, as they existed under the Texas Medicaid State Plan prior to September 1, 2006, HHSC must repeal it and replace it with new §355.8443.

CMS only approved the existing methodology until August 31, 2006; the proposed new rule will be retroactively effective September 1, 2006.

Section-by-Section Summary

HHSC proposes to repeal §355.8301 and replace it with §355.8443. New §355.8443 provides the covered services and reimbursement methodology approved by CMS for school districts effective retroactive to September 1, 2006.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect that there will be no fiscal impact to the state government. There will be no net fiscal impact to the State to implement these changes, but the revisions to the reimbursement methodology will result in less federal funding to the school districts. Since the services are required to be delivered to special education students in accordance with the federal Individuals with Disabilities Education Improvement Act funding requirements, the school districts will be required to spend additional state/local funding to make up the loss of federal Medicaid funding. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed rules are in effect, the public will benefit from the adoption of the repeal of the existing rule and adoption of the new rule. The anticipated public benefit, as a result of enforcing these changes in the rules, will be to clarify the covered services and reimbursement for those services as well as to define the cost reporting, reconciliation and settlement processes for SHARS delivered by school districts to Medicaid-eligible special education students under the age of 21.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

Takings Impact Assessment HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Public Comment

Written comments on the proposal may be submitted to Gary Crane, in Rate Analysis for Acute Care and Cost Reporting Services, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax, 512-491-1983; or by e-mail at Gary.Crane@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

DIVISION 16. SCHOOL HEALTH AND RELATED SERVICES

1 TAC §355.8301

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Statutory Authority

The repeal is proposed under the Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8301. *Reimbursement.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 30, 2007.

TRD-200701689

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 10, 2007

For further information, please call: (512) 424-6900



DIVISION 23. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)

1 TAC §355.8443

Statutory Authority

The new rule is proposed under the Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8443. *Reimbursement Methodology for School Health and Related Services (SHARS).*

(a) School-based services are known as School Health and Related Services (SHARS) in Texas. These services are available to children under the age of 21 years and eligible for the Early and Periodic Screening and Diagnosis and Treatment (EPSDT) program. The SHARS services are provided by school district staff and include the following services:

- (1) Audiology and Hearing Services;
- (2) Physician Services;
- (3) Occupational Therapy;
- (4) Physical Therapy;
- (5) Psychological Services;
- (6) Speech and Language Services;
- (7) Nursing Services;
- (8) Counseling Services;
- (9) Transportation Services; and
- (10) Personal Care Services.

(b) Direct Medical Services Payment Methodology. Effective for dates of service on or after September 1, 2006, providers are reimbursed on an interim basis for SHARS direct medical services per unit of service at the lesser of the provider's billed charges or a provider-specific interim rate.

(1) The units of service are 15-minute units for all covered services other than medication administration (a nursing service) which are based on a per-visit basis; assessment services, which are based on a per-hour basis; and personal care services on the bus and specialized transportation services, which are based on a per-one-way trip basis.

(2) The provider-specific interim rate is the rate for a specific service for a period that is provisional in nature, pending the completion of a cost reconciliation and a cost settlement for that period.

(3) To determine the Medicaid-allowable direct and indirect costs of providing SHARS direct medical services to Medicaid-eligible clients, the following steps are performed:

(A) Direct costs are accumulated on the annual cost report, resulting in total direct costs. The cost report contains the scope of cost and methods of cost allocation. Direct costs for direct medical services include unallocated payroll costs and other unallocated costs that can be directly charged to direct medical services. Direct payroll costs include total compensation (i.e., salaries and benefits and contract compensation) of direct services personnel and provided by the school district's staff, excluding transportation personnel. Other direct costs include costs directly related to the approved direct services personnel for the delivery of medical services, such as purchased services, capital outlay, travel, materials and supplies.

(B) Total direct costs for direct medical services from subparagraph (A) of this paragraph are reduced by any federal payments for those costs, resulting in adjusted direct costs for direct medical services.

(C) Adjusted direct costs for direct medical services from subparagraph (B) of this paragraph are then allocated to direct medical services regardless of payer source by applying the direct

medical services percentage derived from an HHSC-administered time study, resulting in net direct costs.

(D) An HHSC-administered time study is used to determine the percentage of time that medical service personnel spend on direct medical services, general and administrative time and all other activities to account for 100 percent of time to assure that there is no duplicate claiming. This time study methodology will utilize two mutually exclusive cost pools representing individuals performing predominantly administrative activities and direct services, respectively. A sufficient number of medical services personnel will be sampled to ensure time study results that will have a confidence level of at least 95 percent with a precision of plus or minus five percent overall. The same single direct medical services time study percentage is applied against costs for all medical disciplines.

(E) Indirect costs are determined by applying the school district's specific unrestricted indirect cost rate to its net direct costs. Texas public school districts use predetermined fixed rates for indirect costs. The Texas Education Agency (TEA) has, in cooperation with the United States Department of Education (USDE), developed an indirect cost plan to be used by school districts in Texas. Pursuant to the authorization in 34 CFR §75.561(b), TEA approves unrestricted indirect cost rates for school districts for the USDE, which is the cognizant agency for school districts.

(F) Net direct costs and indirect costs are added together.

(G) Medicaid's portion of total net costs is identified by multiplying the results of subparagraph (F) of this paragraph by the ratio of the total number of students with Individualized Education Programs (IEPs) receiving medical services and eligible for Medicaid over the total number of students with IEPs receiving medical services.

(c) Transportation Services Payment Methodology. Effective for dates of service on and after September 1, 2006, providers are reimbursed for covered SHARS transportation services per unit of service at the lesser of the provider's billed charges or a provider-specific interim rate. The unit of service is based on a one-way trip. The provider-specific interim rate is the rate for a period that is provisional in nature, pending the completion of a cost reconciliation and a cost settlement for that period. To determine the Medicaid-allowable direct and indirect costs of providing SHARS-covered transportation services to Medicaid-eligible clients, the following steps are performed:

(1) Direct costs are accumulated on the annual cost report, resulting in total direct costs. Direct costs for covered transportation services include unallocated payroll costs and other unallocated costs that can be directly charged to covered transportation services. Direct payroll costs include total compensation (i.e., salaries and benefits and contract compensation) of bus drivers and mechanics. Other direct costs include costs directly related to the delivery of covered transportation services, such as professional and contracted services, contracted transportation costs, gasoline and other fuels, other maintenance and repair costs, vehicle insurance, interest, rentals, and vehicle depreciation. Depreciation must be documented by completing the Depreciation Schedule in the SHARS Cost Report. Allowable depreciation expense includes only pure straight-line depreciation. No accelerated or additional first-year depreciation expense is allowable. Required detail must be provided for each depreciable asset and each depreciable asset must be assigned a correct estimated useful life. Minimum usual lives must be consistent with "Estimated Useful Lives of Depreciable Hospital Assets," published by the American Hospital Association (AHA).

(2) Total direct costs for covered transportation services from paragraph (1) of this subsection are reduced by any federal pay-

ments for those costs, resulting in adjusted direct costs for covered transportation services.

(3) Adjusted direct costs from paragraph (2) of this subsection are then allocated to Medicaid by applying the ratio of one-way trips provided pursuant to an IEP to Medicaid beneficiaries over total one-way specialized transportation trips. Daily trip logs will be maintained to record one-way specialized transportation trips.

(4) Indirect costs are determined by applying the school district's specific unrestricted indirect cost rate to its net direct costs. Texas public school districts use predetermined fixed rates for indirect costs. TEA has, in cooperation with the USDE, developed an indirect cost plan to be used by school districts in Texas. Pursuant to the authorization in 34 CFR §75.561(b), TEA approves unrestricted indirect cost rates for school districts for the USDE, which is the cognizant agency for school districts.

(5) Net direct costs and indirect costs are added together.

(d) Certification of Funds Process. Each provider certifies on a quarterly basis an amount equal to each interim rate times the units of service reimbursed during the previous federal fiscal quarter.

(1) Each provider certifies on an annual basis through its cost report its total actual incurred allowable costs/expenditures.

(2) Providers are permitted only to certify Medicaid-allowable costs and are not permitted to certify any indirect costs that are outside their unrestricted indirect cost rate.

(e) Annual Cost Report Process. Each provider will complete an annual cost report for all SHARS services delivered during the previous state fiscal year covering September 1 through August 31. The cost report is due on or before March 1 of the year following the reporting period. The primary purposes of the cost report are to:

(1) Document the provider's total Medicaid-allowable scope of costs for delivering SHARS, including direct costs and indirect costs, based on approved cost allocation methodology procedures; and

(2) Reconcile its interim payments to its total Medicaid-allowable scope of costs based on approved cost allocation methodology procedures.

(A) The annual SHARS Cost Report includes a certification of funds statement that must be completed, certifying the provider's actual incurred costs/expenditures.

(B) All filed annual SHARS Cost Reports are subject to review by HHSC or its designee.

(f) The Cost Reconciliation Process. The cost reconciliation process must be completed within twenty-four months of the end of the reporting period covered by the annual SHARS Cost Report. The total Medicaid-allowable scope of costs based on approved cost allocation methodology procedures are compared to the provider's Medicaid interim payments for SHARS delivered during the reporting period as documented in the Medicaid Management Information System (MMIS), resulting in a cost reconciliation.

(g) The Cost Settlement Process. HHSC utilizes a cost settlement process as follows:

(1) If a provider's interim payments exceed the actual, certified costs of the provider for SHARS to Medicaid clients, HHSC will recoup the federal share of the overpayment using one of these two methods:

(A) Offset all future claims payments from the provider until the amount of the federal share of the overpayment is recovered; or

(B) The provider will return an amount equal to the overpayment.

(2) If the actual certified costs of a provider for SHARS exceed the interim Medicaid payments, HHSC will pay the federal share of the difference to the provider in accordance with the final actual certification agreement.

(3) HHSC shall issue a notice of settlement that denotes the amount due to or from the provider.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes the repeal of certain sections of the Public Utility Regulatory Act (PURA); including, §26.2, related to Cross-Reference Transition Provision, §26.82, related to Construction Reports, §26.88, related to Traffic Usage Studies, §26.122, related to Customer Proprietary Network Information (CPNI), §26.126, related to Telephone Solicitation, and §26.275, related to IntraLATA Equal Access, pursuant to the commission's conclusions in Project Number 33043, *Review of Chapter 26 Substantive Rules Applicable to Telecommunications Service Providers Pursuant to Texas Government Code*. Project Number 33951 has been assigned to this project.

In Project Number 33043, the commission determined that all of the rules herein are obsolete. The commission determined that §26.2, created for use during the interim between the commission's change from Chapter 23 to Chapter 26, had expired. The commission also noted that §26.82 is obsolete and that the section should be repealed to eliminate the reporting requirement. The commission agreed to repeal §26.88 because the Federal Communications Commission (FCC) froze interstate traffic factors and intrastate factors in 2001, making the reporting requirement of the section obsolete. Noting that PURA Chapter 62, Subchapter B, was repealed by Senate Bill (SB) 5 in 2005, the commission concluded that §26.122 is now obsolete. In the case of §26.126, the commission concluded that the repeal of PURA Chapter 55, Subchapter G, in 2001, and the repeal of

PURA §55.151 and replacement with Texas No-Call Legislation, reflected in §26.37, Texas No-Call List, make this section obsolete because the requirements are addressed in the new section. Finally, the requirements of §26.275 expired on December 31, 2002, making this section obsolete.

Janis Ervin, Senior Policy Specialist, Infrastructure Reliability Division, has determined that for each year of the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal of the sections.

Ms. Ervin has also determined that for each year of the first five years the proposed repeal is in effect the public benefit anticipated as a result of enforcing the repeal of the sections will be that Chapter 26 will be updated to reflect the impact of completed projects and legislative changes that occurred since the original adoption of these sections. The repeal of these sections will result in less confusion and greater efficiency for the telecommunications providers, the public and the commission. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these repeals. There is no anticipated economic cost to persons who are required to comply with the repeal of the sections as proposed.

Ms. Ervin has also determined that for each year of the first five years that the proposed repeal of these sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, or deemed necessary by commission staff, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Wednesday, June 27, 2007, at 10:00 a.m. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed repeal (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Parties are also requested to e-mail an electronic copy of comments to janis.ervin@puc.state.tx.us, if possible. The commission invites specific comments regarding any costs associated with, and benefits that will be gained by, implementation of the proposed repeal of these sections. The commission will consider the costs and benefits in deciding whether to repeal the proposed sections. All comments should refer to Project Number 33951 and should be organized in sequence by the applicable sections and subsections.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §26.2

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2006) (PURA) which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001 - 66.017 (Vernon 1998, Supplement 2006) (PURA).

§26.2. Cross-Reference Transition Provision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 27, 2007.

TRD-200701602

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §26.82, §26.88

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2006) (PURA) which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001 - 66.017 (Vernon 1998, Supplement 2006) (PURA).

§26.82. Construction Reports.

§26.88. Traffic Usage Studies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200701603

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



SUBCHAPTER F. REGULATION OF TELECOMMUNICATIONS SERVICE

16 TAC §26.122, §26.126

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement

2006) (PURA) which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001 - 66.017 (Vernon 1998, Supplement 2006) (PURA).

§26.122. Customer Proprietary Network Information (CPNI).

§26.126. Telephone Solicitation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 27, 2007.

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Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



SUBCHAPTER L. WHOLESALE MARKET PROVISIONS

16 TAC §26.275

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2006) (PURA) which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001 - 66.017 (Vernon 1998, Supplement 2006) (PURA).

§26.275. IntraLATA Equal Access.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 27, 2007.

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Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 13. LAND RESOURCES

SUBCHAPTER F. VACANCY PROCESS

31 TAC §13.76

The General Land Office (GLO) proposes an amendment to 31 TAC §13.76(d), relating to the deadline for cost deposits required under Texas Natural Resources Code §51.178(b). This amendment will change the deadline in §13.76(d) to reflect the deadline established in Texas Natural Resources Code §51.178(b).

Currently §13.76(d) requires that deposits be submitted to the GLO within thirty (30) days from the date of letter requesting the cost deposit. However, Texas Natural Resources Code §51.178(b) requires that deposits be submitted to the GLO within thirty (30) days from the application commencement date. The proposed amendment will change the language in §13.76(d) to mirror the language in Texas Natural Resources Code §51.178(b).

Bill O'Hara, Chief Surveyor of the General Land Office, has determined that during the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local governments. This rule does not have any fiscal impact or affect on state or local governments.

Mr. O'Hara has also determined that for each year of the first five years the proposed amendment is in effect, the public will benefit from the increased clarity brought about by the revised language. There will be no effect on small businesses, persons or local economies as the result of proposed amendment.

Comments on the proposed rulemaking may be submitted to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, facsimile number (512) 463-6311, or e-mail to walter.talley@glo.state.tx.us. Comments must be received no later than 30 days from the date of publication of this proposal.

The amendment is proposed under Texas Natural Resources Code §51.174(c), which provides the GLO with the authority to adopt rules necessary and convenient to administer the Sale and Lease of Vacancies under Texas Natural Resources Code Title 2, Chapter 51, Subchapter E, §§51.171 - 51.195.

Texas Natural Resources Code, Sale and Lease of Vacancies, §51.178(b), is affected by this proposed amendment.

§13.76. Deposits.

(a) - (c) (No change.)

(d) The Applicant has thirty (30) days from the application commencement date [of letter requesting the cost deposit or supplemental deposit(s)] to submit such deposit. If the Applicant fails to deposit the initial or supplemental deposit within thirty (30) days, the Vacancy Application is terminated without prejudice, and the file wrapper will be endorsed "terminated without prejudice for failure to submit cost deposit within time prescribed by law."

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 30, 2007.

TRD-200701696

Trace L. Finley

Policy Director

General Land Office

Earliest possible date of adoption: June 10, 2007

For further information, please call: (512) 305-8598

TITLE 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 101. PRACTICE AND PROCEDURE REGARDING CLAIMS

34 TAC §101.8, §101.10

The Texas County and District Retirement System proposes amendments to §101.8 and §101.10, concerning the reporting of retirement benefits approved by the director. The proposed amendments to the rules change the basis for reporting benefits to the board from an automatic action to an action based upon the request of the chairman or vice-chairman.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local governments.

Mr. Harrison has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the amended rules will be the greater security of member information made confidential by law. A member's retirement information includes personal information protected under §845.115, Texas Government Code, and routine reports become public records where a greater opportunity exists for that confidentiality to be compromised. These changes do not diminish the board's authority to review any or all of the retirement benefits approved by the director but merely changes a regular report to an exception report where greater security measures may be implemented. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, Texas 78768-2034.

The amendments are proposed under the Texas Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules and perform reasonable activities necessary or desirable for the efficient administration of the system.

No other statute, article, or code is affected by the proposed amendments.

§101.8. Service Retirement Benefits Approved by Director.

If the director finds from the records of the system and from the documents supporting the application that the applicant is entitled to a service retirement benefit, unless a contest has been filed under §101.12 of this title (relating to Contest of Application: Form and Content), the director may approve the retirement, calculate the amount of the benefit and place it into effect without further hearing. On the request of the chairman or vice-chairman, any benefit [All benefits] approved by the director shall be reported to the board.

§101.10. Disability Retirement Benefits Approved by Director.

If the findings and conclusions of the medical board, as stated in its report, are such as in the director's opinion entitle the member under the terms of the Act to the disability retirement benefit applied for,

the director may approve the retirement, calculate the amount of the benefit, and place it into effect without further hearing. On the request of the chairman or vice-chairman, any benefit [All benefits] approved by the director shall be reported to the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200701598

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

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For further information, please call: (512) 637-3230



CHAPTER 107. MISCELLANEOUS RULES

34 TAC §107.4

The Texas County and District Retirement System proposes an amendment to §107.4, concerning the amortization period for the funding of benefits by a subdivision participating under the Annually Determined Contribution Rate Plan. The proposed amendment to the rule changes the amortization period for an unfunded actuarial accrued liability from an open 20-year period to a closed 15-year period. The amortization period for an overfunded actuarial accrued liability remains unchanged as an open 30-year period.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state government and only a minor fiscal implication for a participating local government as a result of enforcing or administering the amended rule. The amended rule will not increase the costs of pension benefits promised by a participating local governmental entity but will require the participating entity to fund its pension liabilities over a shorter period.

Mr. Harrison has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of administering the amended rule will be the greater likelihood that the pension benefits promised an employee will be fully funded over the working career of that employee rather than over the employee's retirement. This supports pension security and produces greater intergenerational equity among local taxpayers. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed.

Comments on the proposed amendment may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, Texas 78768-2034.

The amendment is proposed under the Texas Government Code, §844.703(f), which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt amortization periods and establish criteria for renewing, extending, or shortening any closed period.

No other statute, article, or code is affected by the proposed amendment.

§107.4. Amortization Period.

In accordance with Government Code, Chapter 844, Subchapter H, §844.703(f), for purposes of determining the amortization period for annually determined contribution rate (ADCR) plans, the following rules are effective for plan years beginning after December 31, 2007 [1998], based on actuarial valuations on and after December 31, 2006 [1997].

(1) The prior service contribution rate prescribed by §844.703(b) shall be based on a closed [~~an open~~] amortization period of 15 [20] years.

(2) If a subdivision has an overfunded obligation instead of an unfunded obligation in its plan, the negative prior service contribution rate prescribed by §844.703(b) shall be based on an open amortization period of 30 years.

(3) If the governing body of a subdivision has adopted an ADCR plan and has also elected to contribute at a higher [integer] contribution rate as allowed by §844.703(d), the amortization period for the actuarially determined contribution rate shall be determined from one of the two rules stated above. The amortization period for the higher [integer] contribution rate shall be calculated in each annual actuarial valuation as the number of years required to amortize the unfunded obligation in that actuarial valuation, assuming that the employer contribution rate available to amortize the unfunded obligation shall be equal each year in the future, beginning one year after the actuarial valuation date, to the excess of the higher [integer] contribution rate over the normal cost contribution rate determined in that actuarial valuation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200701599

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

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For further information, please call: (512) 637-3230



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

SUBCHAPTER E. APPEALS AND HEARING PROCEDURES FOR VOCATIONAL REHABILITATION AND INDEPENDENT LIVING PROGRAMS

The Texas Health and Human Services Commission proposes amendments to the rules of the Department of Assistive and Rehabilitative Services in Title 40, Part 2, Chapter 101, concerning Administrative Rules and Procedures. This proposal adds a new Subchapter E, Appeals and Hearing Procedures

for Vocational Rehabilitation and Independent Living Programs, Division 1, General Rules, §101.811 and §101.821; Division 2, Division for Blind Services Appeals and Hearing Procedures, §§101.851, 101.853, 101.855, 101.857, 101.859, 101.861, 101.863, 101.865, 101.867, 101.869, 101.871, 101.873, 101.875, 101.877, 101.879, 101.881, 101.883 and Division 3, Division for Rehabilitation Services Appeals and Hearing Procedures, §§101.901, 101.903, 101.905, 101.907, 101.909 and 101.911.

The new rules are proposed to clarify and update program rules from the former Texas Commission for the Blind and the former Texas Rehabilitation Commission, which were consolidated into the Department of Assistive and Rehabilitative Services (DARS) in 2004, into a single set of rules applicable to appeal and hearings procedures for all vocational rehabilitation and independent living programs administered by the DARS, as provided by House Bill 2292, 78th Legislature, Regular Session. Rules relating to appeals and hearing procedures for these programs were previously contained in Chapter 106, Subchapter A, Division 1, of this title, relating to Blind Services, and in Chapter 107, Subchapter C of this title, relating to Rehabilitation Services. The repeal of those rules is contemporaneously proposed elsewhere in this issue of the *Texas Register*.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the rules will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the rules will be in effect, the public benefit anticipated as a result of adopting the proposed rules will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the rules as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed rules will not affect a local economy.

Comments on the proposal may be submitted to Barbara Lazard, Assistant General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756-3178.

DIVISION 1. GENERAL RULES

40 TAC §101.811, §101.821

The new rules are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.811. Motion for Reconsideration.

(a) Either party to a hearing may file a motion for reconsideration with the Hearings Coordinator, DARS Legal Services, within 20 days after the party is notified of the issuance of the decision of the impartial hearing officer.

(b) The motion for reconsideration must specify the matters in the decision of the impartial hearing officer which the party considers

to be erroneous. Any response to the motion for reconsideration must be filed no later than thirty days after a party, or a party's attorney or representative is notified of the issuance of the decision of the impartial hearing officer.

(c) The impartial hearing officer shall rule on the motion for reconsideration no later than 15 days after receipt of the motion, or after receipt of the response to the motion for reconsideration, whichever comes later. If the motion is granted, the Impartial Hearing Officer shall issue a decision upon reconsideration within an additional 15 days. If the impartial hearing officer fails to rule on the motion for reconsideration within 15 days, the motion is denied as a matter of law.

(d) Service. Service of the impartial hearing officer's decision or of a motion or response under this section shall be made by any of the following means to a party, a party's attorney or representative--

(1) Hand-delivery;

(2) Courier-receipted delivery;

(3) Regular first-class mail, certified or registered mail;

(4) Email or facsimile transmission before 5:00 p.m. on a business day to the recipient's current email address or telecopier number; or

(5) Such other means as the Impartial Hearing Officer may direct.

(e) Date of service. The date of service is the date of hand-delivery, of delivery by courier, of mailing, of emailing or of facsimile transmission, unless otherwise required by law. Unless the contrary is shown, a decision, motion or response that is sent by regular first-class mail shall be presumed to have been received within three days of the date of post-marking, if enclosed in a wrapper addressed to the recipient's last known address with return address to the sender; stamped with the appropriate first-class postage; and deposited on the date post-marked with the U.S. Postal Service.

§101.821. Civil Action.

(a) Any party who disagrees with the findings and decision of an impartial hearing officer has a right to bring a civil action in any court of competent jurisdiction without regard to the amount in controversy.

(b) A person must initiate a civil action for review of a decision of an impartial hearing officer by filing a petition not later than the thirtieth day after the date on which the decision that is the subject of complaint is final and appealable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 30, 2007.

TRD-200701632

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: June 10, 2007

For further information, please call: (512) 424-4050



DIVISION 2. DIVISION FOR BLIND SERVICES APPEALS AND HEARING PROCEDURES

40 TAC §§101.851, 101.853, 101.855, 101.857, 101.859, 101.861, 101.863, 101.865, 101.867, 101.869, 101.871, 101.873, 101.875, 101.877, 101.879, 101.881, 101.883

The new rules are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.851. Purpose and Scope.

(a) This chapter establishes procedures under which a determination made by the Department concerning the provision of vocational rehabilitation services may be appealed.

(b) The provisions of this chapter apply to appeals that may be initiated by the following:

- (1) An applicant for services;
- (2) An eligible person.

(c) The provisions of this division shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the Department or the substantive rights of any person.

§101.853. Legal Authority and Scope.

(a) The following statutes and regulations authorize the procedures established by the chapter:

- (1) The Rehabilitation Act of 1973, as amended, 29 U.S.C. §§701 et seq. and regulations of the Department of Education, 34 CFR §361.57 et seq. as amended.
- (2) Texas Human Resources Code Chapter 91 (concerning vocational rehabilitation services for the blind and visually-impaired);
- (3) Texas Human Resources Code Chapter 111 (concerning vocational rehabilitation services for the disabled);
- (4) Texas Administrative Procedure Act, Texas Government Code Chapter 2001, as amended.

(b) Determinations to which the procedures of this chapter apply are those that concern the denial, reduction, suspension or termination by the Division's vocational rehabilitation services program.

(c) A person's decision to seek an informal resolution to matters about which the person is dissatisfied shall not prevent, compromise, or delay the person's access to formal resolution procedures in this division.

(d) The Division shall not institute a suspension, reduction, or termination of services being provided under an individualized plan for employment or independent living plan pending informal resolution or a final determination of the formal hearing under this division unless the individual or, in an appropriate case, the individual's authorized representative, so requests or the agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.

§101.855. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. The use of the singular or plural case is not meant to be limiting unless the context clearly indicates otherwise.

(1) Act--The Rehabilitation Act of 1973 as amended, 29 United States Code, §701, et seq.

(2) Appellant--An applicant, consumer, or authorized representative who has initiated formal procedures pursuant to this chapter.

(3) Applicant--A person who has applied for services but for whom an eligibility determination has not been made.

(4) Authorized representative--An attorney authorized to practice law in the State of Texas, or a person designated by a party to represent the party in hearing procedures. The term includes a parent or guardian if the appellant is a child or a person adjudicated as a ward by a court of competent jurisdiction.

(5) Consumer--A person who has been determined eligible for and is receiving services from the Department.

(6) Department--the Department of Assistive and Rehabilitative Services (also referred to as "DARS").

(7) Discovery--The process by which a party may, prior to the hearing, obtain evidence which is relevant to the subject matter of the hearing.

(8) Commissioner--the Commissioner of the Department of Assistive and Rehabilitative Services.

(9) Hearing--A formal review conducted under this chapter. This term includes prehearing conferences.

(10) Impartial hearing officer (IHO)--A person who is appointed to conduct a hearing under this chapter.

(11) Party--A person or agency named or admitted to participate in a formal hearing.

(12) Person--Any individual, representative, corporation, or other entity, including any public or nonprofit corporation, or agency or instrumentality of federal, state, or local government.

(13) Record--The official record of a hearing, including all arguments, briefs, pleadings, motions, intermediate rulings, orders, evidence received or considered, statements of matters officially noticed, questions and offers of proof, objections and rulings on objections, proposed findings of fact, conclusions of law, hearing officer decision, any other decision, opinion, or report by the hearing officer or commissioner, and all Department memoranda or data, including consumer and applicant files, submitted to or considered by the impartial hearing officer or commissioner.

§101.857. Filing a Request for Review.

(a) Any applicant or eligible individual, who is dissatisfied with a determination made by the staff of the Department concerning the furnishing or denial of services may request a review of the determination.

(b) The request for a review shall be filed in writing with the Coordinator for Hearings, Legal Services, DARS.

(1) A request shall be considered filed on the day that it is received by the Coordinator for Hearings.

(2) Preprinted forms for this purpose are available upon request either from the Coordinator for Hearings, Legal Services or from any Department office.

(c) Upon receiving a request for review, the Coordinator for Hearings, Legal Services, shall, no later than the next working day, mail the appellant:

(1) the name, address, and phone number of the Client Assistance Program established pursuant to federal law;

(2) the name of the impartial hearing officer appointed to hear the appeal, and the date, time and place of any pre-hearing;

(3) a copy of applicable hearing procedures; and

(4) notice that the appellant has the right to request mediation procedures.

(d) A request for review shall be considered timely if it is received by the Department no later than 180 days from the date the person was mailed notice of the determination to the person's last known address.

§101.859. Assignment of Impartial Hearing Officer.

(a) The Department's authorized representative shall select, on a random basis or by agreement between the Department's representative and the appellant, or if appropriate, the appellant's authorized representative, an impartial hearing officer from a pool of persons qualified according to these rules.

(b) The impartial hearing officer shall be an individual who:

(1) is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(2) has not been involved in previous decisions regarding the vocational rehabilitation of the appellant;

(3) has knowledge of the delivery of vocational rehabilitation services, the state plan, and the federal and state regulations governing the provision of services;

(4) has received training specified by the Department with respect to the performance of official duties; and

(5) has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.

(c) An individual is not considered to be an employee of a public agency for the purposes of subsection (b) of this section solely because the individual is paid by the agency to serve as a hearing officer.

§101.861. Powers and Duties of the Impartial Hearing Officer.

(a) The impartial hearing officer shall have the authority and duty to:

(1) conduct a full, fair, and impartial hearing;

(2) take action to avoid unnecessary delay in the disposition of the proceeding; and

(3) maintain order.

(b) The impartial hearing officer has the power to regulate the course of the hearing, including the power to:

(1) administer oaths;

(2) take testimony;

(3) rule on questions of evidence;

(4) rule on discovery issues;

(5) issue orders relating to hearing and prehearing matters, including orders granting motions to subpoena witnesses and imposing sanctions regarding discovery;

(6) admit or deny party status;

(7) limit irrelevant, immaterial, and unduly repetitious testimony and reasonably limit the time for presentations;

(8) grant continuance(s);

(9) request parties to submit legal memoranda, proposed findings of fact and conclusions of law; and

(10) issue decisions based on findings of fact and conclusions of law.

(c) Unless required for the disposition of ex parte matters authorized by law, the impartial hearing officer may not directly or indirectly communicate in connection with any issue of fact or law with the commissioner or any party or a party's authorized representative, except on notice and opportunity for each party to participate.

(d) The authority of the impartial hearing officer concerning any discovery under subsection (b) of this section is subject to the authority granted by the Texas Administrative Procedure Act, Texas Government Code Chapter 2001.

§101.863. Reasonable Accommodations.

(a) Any hearing or proceedings conducted under these provisions shall be held, whenever feasible, by telephone, but at a time and place reasonably accessible to the appellant and witnesses, and convenient for parties. In considering the physical location of a hearing or proceeding, the impartial hearing officer shall consider, among other factors, the suitability of any proposed facilities for a hearing, including such accommodations as the ability of the appellant and witnesses to gain physical access to the facilities;

(b) The Department shall, upon reasonable notice, provide the appellant with readers or interpreters during proceedings conducted pursuant to this division. Reasonable notice shall be considered as no fewer than five working days prior to the proceeding unless good cause for a shorter period of time shall exist in the judgment of the impartial hearing officer.

(c) A copy of a transcript prepared during hearing proceedings and all notices and documents shall be provided to the appellant in an accessible format.

§101.865. Failure To Attend Hearing and Default.

If, after receiving a notice of a hearing, a party or the party's authorized representative fails to attend a hearing, the impartial hearing officer may proceed and, where appropriate, may issue a default decision against the absent party.

§101.867. Witness Fees.

(a) Any witness or deponent who is not a party to and who is subpoenaed or otherwise appears at any hearing or proceeding at the instance of the Department is entitled to receive reimbursement as provided in the Texas Government Code §200.103.

(b) The Department is not responsible for expenses incurred by any witness or deponent who is not a party to and who is subpoenaed or otherwise appears at any hearing or proceeding at the instance of the appellant except as such cost may be determined by the impartial hearing officer to be the responsibility of the Commission as a part of the decision in the appeal.

(c) The party calling or deposing an expert witness shall be responsible for all fees and expenses charged by the expert witness.

§101.869. Dismissal Without Hearing.

(a) The impartial hearing officer may entertain motions for dismissal without a hearing for the following reasons:

(1) failure to pursue the hearing;

(2) unnecessary duplication of proceedings or res judicata;

(3) withdrawal of the request for hearing;

- (4) moot questions;
- (5) lack of jurisdiction;
- (6) failure to raise a material issue in the pleading; and
- (7) failure of a party or authorized representative to appear at a scheduled hearing.

(b) If the impartial hearing officer finds that such motion should be granted the impartial hearing officer will so order, and the commissioner may enter a final order of dismissal.

§101.871. Discovery.

(a) Parties are entitled to conduct the following forms of discovery:

- (1) oral or written depositions of any party or nonparty;
- (2) written interrogatories to a party;
- (3) requests of a party for admission of facts and the genuineness or identity of documents or things;
- (4) requests and motions for production, examination, and copying of documents or other tangible materials; and
- (5) requests for physical or mental examinations of persons.

(b) Parties may obtain discovery regarding any matter which is relevant to the subject matter of the hearing or which is reasonably calculated to lead to the discovery of evidence which would be admissible at the hearing.

(c) All discovery requests should be directed to the party from which discovery is being sought.

(d) All disputes with respect to any discovery matter shall be filed with and resolved by the impartial hearing officer.

(e) All parties shall be afforded a reasonable opportunity to file objections and motions to compel with the impartial hearing officer regarding any and all discovery requests.

(f) Copies of discovery requests and documents filed in response thereto shall be filed on all parties, but should not be filed with the impartial hearing officer unless directed to do so by the impartial hearing officer or when in support of objections, motions to compel, motions for protective order, or motions to quash.

(g) To the extent not inconsistent with these rules and applicable statutes, discovery shall be governed by the Texas Rules of Civil Procedure and applicable case law thereunder, provided however, that all such rules shall be liberally construed in furtherance of the ends of justice.

(h) To the extent not inconsistent with these rules and applicable statutes, formal rules of evidence shall not apply and any evidence of any character may be admitted and considered by the impartial hearing officer if the impartial hearing officer deems such evidence relevant to the resolution of the issues presented for consideration.

(i) Any documents contained in any file of the Department related to the appellant are to be deemed admissible.

§101.873. Order of Proceedings.

(a) A case shall be called to order by the impartial hearing officer.

(b) Proceedings shall be conducted according to the following:

(1) The appellant may state briefly the nature of the claim or defense, what the appellant expects to prove, and the relief sought. Immediately thereafter, the Department may make a similar statement,

and any other parties will be afforded similar rights as determined by the impartial hearing officer. The impartial hearing officer may limit the time available for each party or authorized representative with respect to such statement.

(2) Evidence shall then be introduced by the appellant. The Department or Department's authorized representative and any other parties shall have the opportunity to cross-examine each of the appellant's witnesses.

(3) Cross-examination is not limited solely to matters raised on direct examination. Parties or authorized representatives are entitled to redirect and recross-examination.

(4) Unless the statement has already been made, the Department or the Department's authorized representative may briefly state the nature of the claim or defense, what the Department expects to prove, and the relief sought.

(5) Evidence, if any, shall be introduced by the Department. The appellant and any other parties shall have the opportunity to cross-examine each of the Department's witnesses.

(6) Any other parties may make statements and introduce evidence. The appellant and the Department shall have opportunity to cross-examine the other parties' witnesses.

(7) The parties may present rebuttal evidence.

(8) The parties may be allowed closing statements at the discretion of the impartial hearing officer.

(9) The impartial hearing officer may examine any witness and party.

(c) The impartial hearing officer may permit deviations from this order of procedure in the interest of justice or to expedite the proceedings.

(d) Parties shall provide four copies of each exhibit offered.

(e) Evidence may be excluded which is determined by the impartial hearing officer to be irrelevant, immaterial, or unduly repetitious.

§101.875. Transcription of Proceedings.

(a) Unless precluded by law, the parties to a hearing may agree upon a statement of facts, agree to use taped transcriptions as a statement of facts, or agree to the summarization of testimony before the hearing officer; provided, however, that proceedings or any part of them must be transcribed on written request of any party.

(b) The Department shall contract for and bear the cost of hearing transcripts. Nothing provided for in this section limits the Department to a stenographic record of the proceedings.

§101.877. Documentary Evidence and Official Notice.

(a) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the original and the copy or excerpts.

(b) When numerous similar documents which are otherwise admissible are offered into evidence, the impartial hearing officer may limit the documents received to those which are typical and representative. The impartial hearing officer may also require that an abstract of relevant data from the documents be presented in the form of an exhibit, provided that all parties be given the right to examine the documents from which such abstracts were made.

(c) The following laws, rules, regulations, and policies are officially noticed:

(1) The Rehabilitation Act of 1973, as amended, 29 United States Code §§701, et. seq.;

(2) Division of Education regulations, 34 Code of Federal Regulations, Part 361;

(3) Texas Human Resources Code, Chapter 91;

(4) Department of Assistive and Rehabilitative Services, Division for Blind Service's State Plan for Vocational Rehabilitation Services;

(5) Department of Assistive and Rehabilitative Services, Division for Blind Service's Vocational Rehabilitation and Independent Living Manuals; and

(6) Texas Administrative Code, Title 40, Part II, Department of Assistive and Rehabilitative Services.

§101.879. Pleadings.

(a) In a formal appeal, all pleadings, for which no other form is prescribed, shall contain:

- (1) the name of the party making the pleading;
- (2) the names of all other known parties;
- (3) a concise statement of the facts alleged and relied upon;
- (4) a prayer stating the type of relief, action, or order desired;
- (5) any other matter required by law;
- (6) a certificate of service, as required by these rules; and
- (7) the signature of the party or the party's authorized representative making the pleading.

(b) Any pleading filed pursuant to a formal appeal may be amended up to 14 days prior to the hearing. Amendments filed after that time shall be accepted at the discretion of the impartial hearing officer.

(c) Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the Department.

(d) All pleadings relating to any matter pending before the Department shall be filed with the impartial hearing officer and all parties.

(e) All pleadings shall be in a format and medium reasonably calculated to provide the required information and must be clear and legible.

(f) Pleadings shall contain the name, address, and telephone number of the party filing the document or the name, telephone number, and business address of the authorized representative.

(g) The party or the party's authorized representative filing the pleading shall include a signed certification that a true and correct copy of the pleading has been served on every other party.

§101.881. Impartial Hearing Officer Decision.

(a) Within 30 days of the hearing completion date, the impartial hearing officer shall issue a decision based on the evidence and which is not inconsistent with the provisions of the approved state plan, the Act, federal vocational rehabilitation regulations, and state regulations and policies that are consistent with federal requirements, and shall provide to the appellant or, if appropriate, the appellant's authorized representative, the commissioner, and the Department's authorized representative a full written report of the findings of fact, conclusions of law, and any other grounds for the decision.

(b) The hearing completion date shall be that date upon which the impartial hearing officer receives the transcript, if any was prepared, of the oral hearing, or, if no transcript was prepared, the date of the adjournment of the hearing.

(c) The decision shall address each issue considered by the impartial hearing officer.

(d) The impartial hearing officer may prescribe such remedies as are appropriate within the scope of the Vocational Rehabilitation Program or Independent Living Program, whichever is applicable.

(1) The impartial hearing officer may not award monetary damages to any party.

(2) The impartial hearing officer may not prescribe an action affecting the employment of an employee of the Department.

§101.883. Mediation Procedures.

(a) An applicant or eligible individual who is seeking a review under the provisions of this division may request mediation to resolve the dispute. The Department, with the consent of the applicant or eligible individual, may also originate the request for mediation.

(b) Mediation is voluntary on the part of the parties and must not be used to deny or delay the right of an individual to a hearing under this subsection, or to deny any other right afforded by the Rehabilitation Act, and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(c) All costs related to the mediation process shall be borne by the agency.

(d) Upon receiving a request for mediation, the Commissioner shall either:

(1) select an individual from a list of qualified mediators who are knowledgeable in laws and regulations relating to the provision of vocational rehabilitation or independent living services, whichever may be applicable to the dispute, or

(2) inform the consumer that the agency does not believe mediation will be effective in resolving the dispute and the agency cannot voluntarily participate in the mediation process.

(e) Sessions in the mediation process shall be coordinated by the mediator in a timely manner at a location convenient to both parties in the dispute.

(f) All discussions that occur during the mediation sessions are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The mediator may require the parties to sign a confidentiality pledge prior to the commencement of the mediation process.

(g) Any agreement reached through the mediation process shall be documented in a written mediation agreement and signed by the parties to the dispute. The agreement then becomes a part of the consumer record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 30, 2007.

TRD-200701633



DIVISION 3. DIVISION FOR REHABILITATION SERVICES APPEALS AND HEARING PROCEDURES

40 TAC §§101.901, 101.903, 101.905, 101.907, 101.909, 101.911

The new rules are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.901. Purpose and Scope.

(a) Purpose.

(1) The purpose of these rules is to provide the Division for Rehabilitation Services with a system for the institution, conduct, and determination of "due process hearings" and "mediation" as those terms are defined herein. These rules shall be liberally construed in accordance with the purpose for which they were adopted. These rules inform all applicants and persons served by DRS of their due process right to appeal when they are dissatisfied with any determination made by a rehabilitation counselor or agency official regarding the furnishing or denial of services.

(2) The procedures implemented by this Chapter ensure that an applicant or eligible individual who is dissatisfied with any determination made by personnel of the Division that affects the provision of vocational rehabilitation services may request, or, if appropriate, may request through the individual's representative, a timely review of that determination.

(b) Authority. These rules are created pursuant to the Rehabilitation Act of 1973, as amended, 29 United States Code Annotated (USCA) §§701 et seq. and Department of Education Regulations at 34 Code of Federal Regulations (CFR), Part 361. Federal laws and regulations prevail over state laws and regulations. The Administrative Procedure Act, Texas Government Code Annotated, §§2001.001 et seq. does not apply to consumer administrative due process hearings which are conducted pursuant to federal law.

(c) Scope.

(1) This chapter applies to consumer (applicant) appeals, mediations, and hearings before the Division for Rehabilitation Services.

(2) These rules shall be construed to insure fair and expeditious determinations.

(3) These rules may supplement the procedures required by law.

(d) Source: 34 CFR §361.57(a).

§101.903. Definitions.

(a) Applicant--An individual who has applied for services under the Act, but for whom an eligibility determination has not been made.

(b) Commissioner--the commissioner of the Department of Assistive and Rehabilitative Services.

(c) Department--the Department of Assistive and Rehabilitative Services (DARS).

(d) Division--the Division for Rehabilitation Services.

(e) Eligible individual--An individual who has been determined to be eligible for services by the Division pursuant to the Act and Division rules. As used in these rules, unless specifically denoted, the terms "eligible individual" and "consumer" are synonymous.

(f) Appeal--The timely filing of a Petition for Due Process Hearing due to a consumer's continued dissatisfaction with a decision of the Division for Rehabilitation Services regarding the furnishing or denial of services, followed by a formal due process hearing conducted under these rules by an impartial hearing officer regarding allegations set forth in the consumer's Petition for Due Process Hearing regarding the furnishing or denial of services. This term includes pre-hearing conferences.

(g) Impartial hearing officer:

(1) Impartial hearing officer means an individual who:

(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(B) Is not a member of the Rehabilitation Council of Texas;

(C) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(D) Has knowledge of the delivery of vocational rehabilitation services, the State plan, and the Federal and State regulations governing the provision of services;

(E) Has received training with respect to the performance of official duties; and

(F) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.

(2) An individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer.

(3) Source: 34 CFR §361.5(b)(25).

(h) Mediation--A voluntary process by which applicants and eligible individuals who have requested appeals may attempt resolution of disputes with the Division for Rehabilitation Services involving determinations affecting the provision of vocational rehabilitation services through the use of a trained mediator.

(i) Hearings Coordinator--An individual within the Department of Assistive and Rehabilitative Services who provides, among other functions, administrative support to the impartial hearing officer during the appeal process and is the point of contact for consumer's questions about due process hearings.

(j) Qualified and impartial mediator:

(1) Qualified and impartial mediator means an individual

who:

(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a State office of mediators, or employee of an institution of higher education);

(B) Is not a member of the Rehabilitation Council of Texas;

(C) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(D) Is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services;

(E) Has been trained in effective mediation techniques consistent with any State-approved or -recognized certification, licensing, registration, or other requirements; and

(F) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings.

(2) An individual serving as a mediator is not considered to be an employee of the Department for the purposes of this definition solely because the individual is paid by the Department to serve as a mediator.

(3) Source: 34 CFR §361.5(b)(43).

§101.905. General Requirements.

(a) Notification. An applicant or eligible individual or, as appropriate, the individual's representative, will be provided notice of:

(1) The right to obtain review of State unit determinations that affect the provision of vocational rehabilitation services through an impartial due process hearing under §101.907(b) of this title (relating to Mediation and Due Process Hearings);

(2) The right to pursue mediation under §101.907(a) of this title (relating to Mediation and Due Process Hearings) with respect to determinations made by designated State unit personnel that affect the provision of vocational rehabilitation services to an applicant or eligible individual;

(3) The requirement that requests for mediation and due process hearings must be filed with the DARS Hearings Coordinator, at the address provided in §101.903(i) of this title (relating to Definitions);

(4) The manner in which a mediator or impartial hearing officer may be selected consistent with the requirements of §101.907(a) and §101.907(b) of this title (relating to Mediation and Due Process Hearings); and

(5) The availability of the client assistance program, established under 34 CFR part 370, to assist the applicant or eligible individual during mediation sessions or impartial due process hearings.

(b) Timing. Notice described in subsection (a) of this section will be provided in writing:

(1) At the time the individual applies for vocational rehabilitation services;

(2) At the time the individual is assigned to a category in the Division's order of selection, if an order of selection under 34 CFR §361.36 has been established;

(3) At the time the IPE is developed; and

(4) Whenever vocational rehabilitation services for an individual are reduced, suspended, or terminated.

(c) Evidence and representation. The procedures established in this chapter--

(1) Provide an applicant or eligible individual or, as appropriate, the individual's representative with an opportunity to submit during mediation sessions or due process hearings evidence and other information that supports the applicant's or eligible individual's position; and

(2) Allow an applicant or eligible individual to be represented during mediation sessions or due process hearings by counsel or other advocate selected by the applicant or eligible individual.

(3) Require correspondence to be addressed to Hearings Coordinator, Department of Assistive and Rehabilitative Services, Legal Services, 4800 North Lamar Blvd., Suite 300, Austin, TX 78756-3178.

(d) Impact on provision of services. The Division will not institute a suspension, reduction, or termination of vocational rehabilitation services being provided to an applicant or eligible individual, including evaluation and assessment services and IPE development, pending a resolution through mediation, pending a decision by a hearing officer or reviewing official unless:

(1) The individual or, in appropriate cases, the individual's representative requests a suspension, reduction, or termination of services; or

(2) The Division has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.

(e) Ineligibility. Applicants who are found ineligible for vocational rehabilitation services and previously eligible individuals who are determined to be no longer eligible for vocational rehabilitation services pursuant to federal rules at 34 CFR §361.43 are permitted to challenge the determinations of ineligibility under the procedures described in this division.

(f) Source: 34 CFR §361.57(b).

§101.907. Mediation and Due Process Hearings.

(a) Mediation.

(1) As required under §101.905(a)(2) of this title (relating to General Requirements), an applicant or eligible individual and the Department may resolve disputes involving Division determinations that affect the provision of vocational rehabilitation services through a mediation process that is available, at a minimum, whenever an applicant or eligible individual or, as appropriate, the individual's representative requests an impartial due process hearing under this rule.

(2) The following procedures apply to mediation:

(A) Participation in the mediation process is voluntary on the part of the applicant or eligible individual, as appropriate, and on the part of the Department;

(B) Use of the mediation process will not be used to deny or delay the applicant's or eligible individual's right to pursue resolution of the dispute through an impartial hearing held within the time period specified in subsection (b)(1) of this section or any other rights provided under this Division. At any point during the mediation process, either party or the mediator may elect to terminate the mediation. In the event mediation is terminated, either party may pursue resolution through an impartial hearing;

(C) The mediation process will be conducted by a qualified and impartial mediator, as defined in §101.903(j) of this title (relating to Definitions), who must be selected from a list of qualified and impartial mediators maintained by the State, by agreement between the Commissioner and the applicant or eligible individual or, as appropriate, the individual's representative; and

(D) Mediation sessions will be scheduled and conducted in a timely manner and are held in a location and manner that is convenient to the parties to the dispute.

(3) Discussions that occur during the mediation process will be kept confidential and will not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(4) An agreement reached by the parties to the dispute in the mediation process must be described in a written mediation agreement that is developed by the parties with the assistance of the qualified and impartial mediator and signed by both parties. Copies of the agreement must be sent to both parties.

(5) The costs of the mediation process will be paid by the Department. The Department will not pay for any costs related to the representation of an applicant or eligible individual authorized under §101.905(c)(2) of this title (relating to General Requirements).

(6) As required by §101.905(c) of this title (relating to General Requirements), the applicant or eligible individual or, if appropriate, the individual's representative will:

(A) be given the opportunity to submit during mediation sessions evidence and other information that supports the applicant's or eligible individual's position; and

(B) be allowed to be represented during mediation sessions by counsel or other advocate selected by the applicant or eligible individual.

(b) Impartial due process hearings. The following formal review procedures, as required under §101.905(a)(1) of this title (relating to General Requirements), are established:

(1) All hearings will be held within the period of time prescribed by §101.911 of this title (relating to Time for Hearing);

(2) The applicant or eligible individual or, if appropriate, the individual's representative will:

(A) be given the opportunity to submit during due process hearings evidence and other information that supports the applicant's or eligible individual's position, as required by §101.905(c) of this title (relating to General Requirements); and

(B) be allowed to be represented during due process hearings by counsel or other advocate selected by the applicant or eligible individual, as required by §101.905(c) of this title (relating to General Requirements); and

(C) be given the opportunity to present witnesses during the hearing and to examine all witnesses and other relevant sources of information and evidence;

(3) The impartial hearing officer will:

(A) Make a decision based on the provisions of the approved State plan, the Act, Federal vocational rehabilitation regulations, and State regulations and policies that are consistent with Federal requirements; and

(B) Provide to the individual or, if appropriate, the individual's representative and to the State unit a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing; and

(4) The hearing officer's decision is final, except that a party involved in a hearing may request reconsideration under §101.811 of this title (relating to Motion for Reconsideration), and

may bring a civil action under §101.821 of this title (relating to Civil Action).

(c) Selection of impartial hearing officers. The impartial hearing officer for a particular case will be selected:

(1) From a list of qualified impartial hearing officers maintained by the Department. Impartial hearing officers included on the list will be jointly identified by the State unit and the State Rehabilitation Council; and

(2) On a random basis, or by agreement between the DARS Commissioner and the applicant or eligible individual or, as appropriate, the individual's representative.

(d) Source: 34 CFR §361.57(d) - (f).

§101.909. Finality of the Hearing Officer's Decision.

The decision of the impartial hearing officer under §101.811 of this title (relating to Motion for Reconsideration) is the final decision of the Department. Any other decision under §101.907 of this title (relating to Mediation and Due Process Hearings) becomes the final decision of the Department if a timely motion for reconsideration is not filed.

§101.911. Time for Hearing.

(a) A hearing conducted by an impartial hearing officer, selected in accordance with §101.907(c) of this title (relating to Mediation and Due Process Hearings), will be held within 60 days of an applicant's or eligible individual's request for review of a determination made by personnel of DRS that affects the provision of vocational rehabilitation services to the individual, unless informal resolution or a mediation agreement is achieved prior to the 60th day or the parties agree to a specific extension of time.

(b) Source: 34 CFR §361.57(e)(1).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

The Texas Health and Human Services Commission proposes amendments to the rules of the Department of Assistive and Rehabilitative Services in Title 40, Part 2, Chapter 101, concerning Administrative Rules and Procedures. This proposal repeals subchapters F, G, H, J, K and L of Chapter 101 and replaces with rules in new subchapters A, B, C, and D of Chapter 101.

The following subchapters, divisions, and sections in Title 40, Chapter 101, are to be repealed:

Subchapter F, Administrative Rules and Procedures Pertaining to Blind Services

Division 1, General Rules, §§101.3601, 101.3603, 101.3605, 101.3607, 101.3609, 101.3611, 101.3613, 101.3615, and 101.3617.

Division 2, Commission Board Procedures, §§101.3641, 101.3643, 101.3645, and 101.3647.

Division 3, Access to Public Information, §§101.3681, 101.3683, 101.3685, 101.3687, and 101.3689.

Division 4, Contract Dispute Resolution, §§101.3711, 101.3713, 101.3715, 101.3717, 101.3719, 101.3721, 101.3723, 101.3725, 101.3727, 101.3729, 101.3731, 101.3733, 101.3735, 101.3737, 101.3739, 101.3741, 101.3743, 101.3745, 101.3747, 101.3749, 101.3751, 101.3753, 101.3755, 101.3757, 101.3759, 101.3761, 101.3763, 101.3765, and 101.3767.

Division 5, Purchase of Goods and Services by the Commission, §§101.3801, 101.3807, and 101.3811.

Subchapter G, Administrative Rules and Procedures Pertaining to Rehabilitation Services

Division 1, General Rules, §§101.4001, 101.4003, 101.4005, 101.4007, 101.4009, 101.4011, 101.4013, 101.4015, 101.4017, 101.4019, 101.4021, 101.4023, 101.4025, 101.4027, 101.4029, 101.4031, 101.4033, 101.4035, 101.4037, 101.4039, and 101.4041.

Division 2, Legal Services, §101.4201 and §101.4203.

Division 3, Special Rules and Policies §§101.4223, 101.4225, 101.4227, 101.4229, 101.4231, 101.4233, 101.4235, 101.4237, 101.4239, and 101.4241.

Subchapter H, Purchase of Goods and Services for Rehabilitation Services

Division 4, Purchase of Goods and Services, §101.4525 and §101.4527.

Division 11, Historically Underutilized Businesses, §§101.5051, 101.5053, 101.5055, and 101.5057.

Division 13, Miscellaneous Requirements, §101.5201 and §101.5205.

Division 14, Contract Administration, §§101.5211, 101.5213, 101.5231, 101.5233, and 101.5235.

Subchapter J, Administrative Rules and Procedures Pertaining to Deaf and Hard of Hearing Services

Division 1, General Provisions, §§101.5801, 101.5803, 101.5805, 101.5807, 101.5809, 101.5811, 101.5813, 101.5815, 101.5817, 101.5819, 101.5821, 101.5823, 101.5825, 101.5827, 101.5829, 101.5831, 101.5833, 101.5835, 101.5837, 101.5839, 101.5841, 101.5843, 101.5845, 101.5847, 101.5849, 101.5851, 101.5853, 101.5855, 101.5857, 101.5859, 101.5861, and 101.5863.

Division 3, Program Standards and Procedures, §101.6401.

Division 4, Rulemaking Procedures, §§101.6451, 101.6453, 101.6455, 101.6457, 101.6459, and 101.6461.

Division 5, Gifts, Grants and Donations, §§101.6601, 101.6603, 101.6605, 101.6607, 101.6609, 101.6611, 101.6613, and 101.6615.

Division 6, Fees, §§101.6701, 101.6703, and 101.6705.

Division 7, Cooperative Activities, §101.6801.

Division 8, Memoranda of Understanding With State Agencies, §101.6821.

Subchapter K, Administrative Rules and Procedures Pertaining to the Rehabilitation Council of Texas, §101.8103.

Subchapter L, Administrative Rules and Procedures Pertaining to the State Independent Living Council, §101.9101.

The following new sections are proposed:

Subchapter A, General Rules, §§101.101, 101.103, 101.105, 101.107, 101.109, 101.111, 101.113, 101.115, 101.117, 101.119, 101.121, 101.123 and 101.131.

Subchapter B, Purchase of Goods and Services, §§101.201, 101.203, 101.209, 101.211 and 101.213.

Subchapter C, Historically Underutilized Businesses, §§101.551, 101.553, 101.555 and 101.557.

Subchapter D, Councils and Committees, §§101.601, 101.603 and 101.605.

The repeals and replacements are being proposed to consolidate separate administrative and purchasing rules from the four legacy agencies of the department, the Texas Commission for the Blind, Texas Rehabilitation Commission, Texas Commission for the Deaf and Hard of Hearing, and the Interagency Council on Early Childhood Intervention, into agency-wide administrative and purchasing rules applicable to the entire Department of Assistive and Rehabilitative Services as provided by House Bill 2292, 78th Legislature, Regular Session.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years the rules will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the rules will be in effect, the public benefit anticipated as a result of adopting the proposed rules will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the rules as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed rules will not affect a local economy.

Comments on the proposal may be submitted to Barbara Lazard, Assistant General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756-3178.

SUBCHAPTER F. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO BLIND SERVICES

DIVISION 1. GENERAL RULES

40 TAC §§101.3601, 101.3603, 101.3605, 101.3607, 101.3609, 101.3611, 101.3613, 101.3615, 101.3617

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority

to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

- §101.3601. *Complaints.*
- §101.3603. *Contracts, Permits, and Licenses.*
- §101.3605. *Reimbursement of Expenses of Witnesses.*
- §101.3607. *Reimbursement for Cost of Special Aids or Attendant.*
- §101.3609. *Criminal History Checks on Applicants for Employment.*
- §101.3611. *Rates for Medical Services.*
- §101.3613. *Payment of Shift Differentials.*
- §101.3615. *Assignment of Commission Vehicles.*
- §101.3617. *Historically Underutilized Businesses.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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DIVISION 2. COMMISSION BOARD PROCEDURES

40 TAC §§101.3641, 101.3643, 101.3645, 101.3647

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

- §101.3641. *Meetings of the Board.*
- §101.3643. *Petition for Adoption of Rules.*
- §101.3645. *Opportunity to Appear Before the Commission's Board.*
- §101.3647. *Public Hearings.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
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DIVISION 3. ACCESS TO PUBLIC INFORMATION

40 TAC §§101.3681, 101.3683, 101.3685, 101.3687, 101.3689

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

- §101.3681. *Requests for Public Information.*
- §101.3683. *Public Information Copy Formats.*
- §101.3685. *Charges for Providing Copies of Public Information.*
- §101.3687. *Processing Complaints of Overcharges.*
- §101.3689. *Access to Public Information for Inspection and Copying.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. CONTRACT DISPUTE RESOLUTION

40 TAC §§101.3711, 101.3713, 101.3715, 101.3717, 101.3719, 101.3721, 101.3723, 101.3725, 101.3727, 101.3729, 101.3731, 101.3733, 101.3735, 101.3737, 101.3739, 101.3741, 101.3743, 101.3745, 101.3747, 101.3749, 101.3751, 101.3753, 101.3755, 101.3757, 101.3759, 101.3761, 101.3763, 101.3765, 101.3767

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

- §101.3711. *Purpose.*
- §101.3713. *Applicability.*

§101.3715. *Definitions.*
 §101.3717. *Prerequisites to Suit.*
 §101.3719. *Sovereign Immunity.*
 §101.3721. *Contractor Claim.*
 §101.3723. *Agency Counterclaim.*
 §101.3725. *Request for Voluntary Disclosure of Additional Information.*
 §101.3727. *Negotiation.*
 §101.3729. *Negotiation Timetable.*
 §101.3731. *Conduct of Negotiation.*
 §101.3733. *Settlement Approval Procedures.*
 §101.3735. *Settlement Agreement after Negotiation.*
 §101.3737. *Costs of Negotiation.*
 §101.3739. *Request for Contested Case Hearing.*
 §101.3741. *Option to Mediate.*
 §101.3743. *Mediation Timetable.*
 §101.3745. *Request for Referral.*
 §101.3747. *Conduct of Mediation.*
 §101.3749. *Agreement to Mediate.*
 §101.3751. *Qualifications and Immunity of the Mediator.*
 §101.3753. *Confidentiality of Mediation and Final Settlement Agreement.*
 §101.3755. *Costs of Mediation.*
 §101.3757. *Settlement Approval Procedures.*
 §101.3759. *Initial Settlement Agreement.*
 §101.3761. *Final Settlement Agreement.*
 §101.3763. *Referral to the State Office of Administrative Hearings.*
 §101.3765. *Other Assisted Negotiation Processes.*
 §101.3767. *Methods of Other Assisted Negotiation and Mediation Processes.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. PURCHASE OF GOODS AND SERVICES BY THE COMMISSION

40 TAC §§101.3801, 101.3807, 101.3811

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority

to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.3801. *Purpose.*
 §101.3807. *Commitment to Fair and Open Competition.*
 §101.3811. *Compliance with Federal Requirements.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO REHABILITATION SERVICES

DIVISION 1. GENERAL RULES

40 TAC §§101.4001, 101.4003, 101.4005, 101.4007, 101.4009, 101.4011, 101.4013, 101.4015, 101.4017, 101.4019, 101.4021, 101.4023, 101.4025, 101.4027, 101.4029, 101.4031, 101.4033, 101.4035, 101.4037, 101.4039, 101.4041

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.4001. *Definitions.*
 §101.4003. *Declaration of Purpose and Policy.*
 §101.4005. *Legal Basis.*
 §101.4007. *Affirmative Action for Equal Employment Opportunity.*
 §101.4009. *Nondiscrimination in Federally Assisted Programs and Federal Grants.*
 §101.4011. *Services for Groups of Individuals with Disabilities.*
 §101.4013. *Standards for Facilities and Providers of Services.*
 §101.4015. *Confidentiality*
 §101.4017. *Cooperation with Other Public Agencies.*
 §101.4019. *Comparable Services and Benefits.*
 §101.4021. *Membership of the TRC Board.*
 §101.4023. *Appointments.*
 §101.4025. *Appointment of Chair.*
 §101.4027. *Meetings.*
 §101.4029. *Quorum.*
 §101.4031. *Functions of the Board.*
 §101.4033. *Meetings Open to the Public.*

§101.4035. *Registration of Speakers before the Board.*

§101.4037. *Petition for Adoption of Rules.*

§101.4039. *Excused Absences.*

§101.4041. *Responsibilities of the Commissioner.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

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DIVISION 2. LEGAL SERVICES

40 TAC §101.4201, §101.4203

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.4201. *Collections.*

§101.4203. *Subrogation.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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DIVISION 3. SPECIAL RULES AND POLICIES

40 TAC §§101.4223, 101.4225, 101.4227, 101.4229, 101.4231, 101.4233, 101.4235, 101.4237, 101.4239, 101.4241

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.4223. *HIV/AIDS Workplace Guidelines.*

§101.4225. *Sick Leave Pool.*

§101.4227. *Board Policies.*

§101.4229. *Criminal Conviction Record Information.*

§101.4231. *Charge for Copies of Public Records.*

§101.4233. *Education Assistance Program.*

§101.4235. *Criminal History Record Information.*

§101.4237. *Restriction on Assignment of Vehicles.*

§101.4239. *Privacy Policies.*

§101.4241. *Complaints.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

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Department of Assistive and Rehabilitative Services

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SUBCHAPTER H. PURCHASE OF GOODS AND SERVICES FOR REHABILITATION SERVICES

DIVISION 4. PURCHASE OF GOODS AND SERVICES

40 TAC §101.4525, §101.4527

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.4525. *Alternative Purchasing Methods - Schedule of Rates for Medical Services.*

§101.4527. *Schedule of Rates.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

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Department of Assistive and Rehabilitative Services

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DIVISION 11. HISTORICALLY UNDERUTILIZED BUSINESSES

40 TAC §§101.5051, 101.5053, 101.5055, 101.5057

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.5051. *Purpose.*

§101.5053. *Applicability.*

§101.5055. *Definitions.*

§101.5057. *Adoption of Rules.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

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Department of Assistive and Rehabilitative Services

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DIVISION 13. MISCELLANEOUS REQUIREMENTS

40 TAC §§101.5201, §101.5205

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.5201. *Standards of Conduct for Procurement Personnel.*

§101.5205. *Purchases for Individual Clients.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



DIVISION 14. CONTRACT ADMINISTRATION

40 TAC §§101.5211, 101.5213, 101.5231, 101.5233, 101.5235

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.5211. *Principles of Contract Administration.*

§101.5213. *Criteria for Determining when Contract is Required.*

§101.5231. *Contract Monitoring Principles.*

§101.5233. *Risk Assessment.*

§101.5235. *Monitoring Performance.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER J. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO DEAF AND HARD OF HEARING SERVICES

DIVISION 1. GENERAL PROVISIONS

40 TAC §§101.5801, 101.5803, 101.5805, 101.5807, 101.5809, 101.5811, 101.5813, 101.5815, 101.5817, 101.5819, 101.5821, 101.5823, 101.5825, 101.5827, 101.5829, 101.5831,

101.5833, 101.5835, 101.5837, 101.5839, 101.5841, 101.5843, 101.5845, 101.5847, 101.5849, 101.5851, 101.5853, 101.5855, 101.5857, 101.5859, 101.5861, 101.5863

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

- §101.5801. *Statutory Authority.*
- §101.5803. *Definitions.*
- §101.5805. *Authority.*
- §101.5807. *Severability.*
- §101.5809. *Functions and Responsibilities.*
- §101.5811. *Composition.*
- §101.5813. *Terms of Office.*
- §101.5815. *Appointment of Chairperson.*
- §101.5817. *Vacancies.*
- §101.5819. *Meetings.*
- §101.5821. *Opportunity to Appear Before the Commission.*
- §101.5823. *Public Hearings.*
- §101.5825. *Services for Deaf and Hard of Hearing Individuals.*
- §101.5827. *Services for Elderly Deaf and Hard of Hearing Individuals.*
- §101.5829. *Camp Sign.*
- §101.5831. *Certificate of Deafness for Tuition Waiver.*
- §101.5833. *Elections of Officers.*
- §101.5835. *Duties of Officers.*
- §101.5837. *Appointment of the Executive Director.*
- §101.5839. *Funding.*
- §101.5841. *Discrimination Prohibited.*
- §101.5843. *Filing a Complaint.*
- §101.5845. *Reports.*
- §101.5847. *Public Information.*
- §101.5849. *Public Access to Internal Procedural Documents.*
- §101.5851. *Task Force Purpose.*
- §101.5853. *Responsibility of Task Force Members.*
- §101.5855. *Term of Membership, Vacancies and Officers.*
- §101.5857. *Qualifications of Task Force Members.*
- §101.5859. *Purchase of Goods and Services.*
- §101.5861. *Contract Dispute Resolution.*
- §101.5863. *Historically Underutilized Businesses.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. PROGRAM STANDARDS AND PROCEDURES

40 TAC §101.6401

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.6401. *Approved Courses and Workshops for the Instruction and Continuing Education of Interpreters for the Deaf.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. RULEMAKING PROCEDURES

40 TAC §§101.6451, 101.6453, 101.6455, 101.6457, 101.6459, 101.6461

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.6451. *Initiation.*

§101.6453. *Notice.*

§101.6455. *Public Comments.*

§101.6457. *Petitions for Adoption of Rules.*

§101.6459. *Validity.*

§101.6461. *Terminology.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. GIFTS, GRANTS, AND DONATIONS

40 TAC §§101.6601, 101.6603, 101.6605, 101.6607, 101.6609, 101.6611, 101.6613, 101.6615

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.6601. *Purpose.*

§101.6603. *Definitions.*

§101.6605. *General Authority to Accept Gifts, Grants, and Donations.*

§101.6607. *Solicitation.*

§101.6609. *Investing or Depositing.*

§101.6611. *Restricted/Unrestricted.*

§101.6613. *Transfer.*

§101.6615. *Standards of Conduct Between Employees and Officers and Donors.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 6. FEES

40 TAC §§101.6701, 101.6703, 101.6705

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.6701. *Purpose.*

§101.6703. *Interpreter Services for the Deaf and Hard of Hearing.*

§101.6705. *Waiver of Fees.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 7. COOPERATIVE ACTIVITIES

40 TAC §101.6801

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.6801. *Coordination with Other Organizations.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

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DIVISION 8. MEMORANDA OF UNDERSTANDING WITH STATE AGENCIES

40 TAC §101.6821

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.6821. *Purpose.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER K. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO THE REHABILITATION COUNCIL OF TEXAS

40 TAC §101.8103

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.8103. *Rehabilitation Council of Texas.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER L. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO THE STATE INDEPENDENT LIVING COUNCIL

40 TAC §101.9101

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.9101. *State Independent Living Council.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

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SUBCHAPTER A. GENERAL RULES

40 TAC §§101.101, 101.103, 101.105, 101.107, 101.109, 101.111, 101.113, 101.115, 101.117, 101.119, 101.121, 101.123, 101.131

The new rules are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.101. Definitions.

The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

(1) Department/DARS--The Department of Assistive and Rehabilitative Services.

(2) Counselor--An employee of the Department who is trained to provide vocational guidance and counseling and meets the minimum qualifications designated in a functional job description.

(3) Extended employment--An occupation-oriented facility operated by a not-for-profit agency, public or private, which, except for its staff, employs only individuals with mental or physical disabilities.

(4) State plan--The plan for vocational rehabilitation services submitted by the Department of Assistive and Rehabilitative Services, Division for Rehabilitation Services and Division for Blind Services in compliance with the Rehabilitation Act of 1973, as amended, Title I.

§101.103. Declaration of Purpose and Policy.

(a) The Department is the principal authority in the state on matters relating to rehabilitation of individuals with disabilities. All other state agencies engaged in rehabilitation activities and related services to individuals shall coordinate those activities and services with the Department.

(b) It is the policy of the State of Texas to provide rehabilitation and related services to eligible individuals with disabilities so that they may prepare for and engage in a gainful occupation or achieve maximum personal independence for the individual.

(c) The Department provides services subject to the availability of funds and in accordance with priorities provided in the state plans as required by federal law and regulation, policies established by the Department, and contracts with the providers of such services.

(d) Under operational policies established by the Department, the commissioner is responsible for the administration, supervision, planning, and direction of all rehabilitation service programs.

(e) Any person who believes that he or she is eligible for rehabilitation services may contact any Department office or employee for assistance.

§101.105. Opportunities for Citizen Participation.

In addition to other procedures listed in Part 2 of this title (relating to Department of Assistive and Rehabilitative Services) citizens, including individuals with disabilities and parents of infants and toddlers with disabilities, have the opportunity to:

(1) voice concerns through public representation on the Department committees and boards;

(2) attend and make public comments at public meetings (notification of all public meetings and agenda items are published in the Texas Register);

(3) comment on all proposed rules; and

(4) submit a petition requesting the adoption of rules.

(A) All petitions proposing the adoption of DARS rules shall be submitted in writing to the DARS commissioner. The petition shall contain the following:

(i) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(ii) a statement of the statutory or other authority under which the rule is to be promulgated; and

(iii) the public benefits anticipated as a result of adopting the rule or the anticipated implications which could result from the failure to adopt the proposed rule.

(B) Requests will be reviewed by DARS staff and recommendation for action will be presented to the Department for action.

§101.107. Privacy Policies.

Pursuant to Chapter 559, Government Code, the Texas Department of Assistive and Rehabilitative Services (DARS) adheres to the following privacy policies.

(1) Right to be informed about information collected. An individual is entitled to be informed about information that DARS collects about the individual unless DARS is allowed to withhold the information from the individual under Government Code, §552.023.

(2) Right to notice about certain information laws and practices.

(A) When DARS collects information about an individual by means of a form that the individual completes and files with DARS in a paper format or in an electronic format on an Internet site, DARS will prominently state, on the paper form and prominently post on the Internet site in connection with the electronic form, that:

(i) with few exceptions, the individual is entitled on request to be informed about the information that DARS collects about the individual;

(ii) under the Government Code, §552.021 and §552.023, the individual is entitled to receive and review the information; and

(iii) under the Government Code, §559.004, the individual is entitled to have DARS correct information about the individual that is incorrect.

(B) When DARS collects information about an individual by means of an Internet site or collects information about the computer network location or identity of a user of the Internet site, DARS will prominently post on the Internet site what information is being collected through the site about the individual or about the computer network location or identity of a user of the site, including what information is being collected by means that are not obvious.

(3) Right to correction of incorrect information. DARS has established a procedure under which an individual is entitled to have DARS correct information about the individual that is possessed by DARS and that is incorrect. Individuals should send a written request to DARS, including their full name and mailing address, and identify the incorrect information and provide the correct information. If the information to be corrected is related to a social security disability determination, to a vocational rehabilitation case, or to a DARS personnel or employment record, the individual's social security number should be included. Any additional material needed to identify the incorrect information or verify the correct information should be attached to the request. The individual may, at his or her option, include with the request a daytime telephone number in the event that DARS needs to call for clarification of the request. The request must be signed, and mailed to Department of Assistive and Rehabilitative Services, ATTN: Records Management Office, 4900 North Lamar Boulevard, Austin, Texas 78751-2316. DARS will acknowledge receipt of the request, and will notify the requester of final action taken.

(4) Applicability of and construction with Public Information Law. Government Code, Chapter 552 governs the charges that

DARS may impose on a person who requests information that DARS collects about himself or herself. However, DARS will not charge an individual to correct information about the individual.

§101.109. Complaints.

(a) Complaints may be filed with the agency in writing via mail, e-mail or by facsimile and by videotape for individuals who use sign language to communicate. Complaints should be directed to the DARS Customer Service Representative or to the Commissioner.

(b) Consumers and service recipients may be notified of the name, mailing address, and telephone number of the Department for the purpose of directing complaints to the Department by inclusion of the information:

(1) on each registration form, application, or written contract relating to participation in a program that is funded in any part by money derived from or through the Department;

(2) on a sign that is prominently displayed in the place of business of each person or entity engaging in a program that is funded in any part by money derived from or through the Department;

(3) in a bill for service provided by a person or entity engaging in a program that is funded in any part by money derived from or through the Department; or

(4) in other media for dissemination of information as determined by the Department.

(c) Ordinarily, complaints will be resolved by DARS within 60 days.

(d) Further information on complaints specifically related to early childhood intervention services may be found in Chapter 108 of this title (relating to Division for Early Childhood Intervention Services).

§101.111. Cooperation with Other Public Agencies.

The Department enters into appropriate cooperative arrangements with, and utilizes the services and facilities of other federal, state, and local public agencies providing services related to the rehabilitation of individuals with disabilities. The Department also works toward maximum coordination and consultation with programs for and relating to the rehabilitation of veterans with disabilities.

§101.113. Criminal History Information on Applicants for Employment.

(a) Within the Department, Criminal History Conviction information obtained from the Texas Department of Public Safety may be used when evaluating applications for employment.

(b) In addition to or instead of that described in subsection (a) of this section, Criminal History Record Information obtained from the Texas Department of Public Safety may be used when evaluating the following applications:

(1) Applications for positions in the Division for Rehabilitation Services (less Office for Deaf and Hard of Hearing Services), and the Division for Disability Determination Services: All applicants whose potential duties include direct contact with consumers of Vocational Rehabilitation Services, Comprehensive Rehabilitation Services, and Independent Living Services in the Division for Rehabilitation Services.

(2) For applicants for positions in the Division for Early Childhood Intervention Services: All applicants whose potential employment involves the delivery of early childhood intervention services or involves direct interactions with or the opportunity to interact and associate with children.

(3) Applications for positions in the Division for Blind Services and DARS Headquarters Administration: All applicants for employment.

(c) Employment with the Department will be denied when an applicant's criminal history contains a felony criminal conviction which has determined by the Commissioner or Assistant Commissioner to make the applicant unfit or unsafe to perform the functions of the job.

(d) Criminal history information other than that described in subsection (b) of this section shall not be disqualifying for employment, but may be considered by the Department in determining the best qualified candidate for a position.

(e) References: Gov't Code, §§411.0985, 411.1131, 411.1142, 411.117.

§101.115. Use of Criminal History Information in Contracting.

Within the Department, Criminal Conviction information obtained from the Texas Department of Public Safety may be used in connection with award and administration of DARS contracts. When used, the terms and conditions of use will be included in the affected contracts.

§101.117. Confidentiality of Consumer Information in Vocational Rehabilitation Programs.

(a) Consumer records.

(1) All personal information made available to Department employees in the course of the administration of rehabilitation services programs, including lists of names, addresses, and records of agency evaluation is confidential.

(2) The use of such information and records is limited to purposes directly connected with the administration of the rehabilitation programs.

(3) Information is not to be disclosed directly or indirectly, other than in the administration of the rehabilitation programs, unless the consent of the consumer has been obtained in writing, in compliance with a court order, or in accordance with a federal or state law or regulation. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibilities for administration of the program.

(4) Upon a consumer's request, information is released to a consumer or, as appropriate, his parent, guardian, or other representative. If, in the opinion of the counselor, release of a particular document in the consumer case file will have a harmful effect on the consumer, the consumer shall be notified that there is information in the case file that can only be released to an appropriate representative designated in writing by the consumer.

(5) All consumer information is the property of the Department.

(b) Other records.

(1) Release of consumer records must be made pursuant to federal law and regulations.

(2) The Department may provide to and receive from any state agency other non-confidential information for the purpose of increasing and enhancing services to consumers and improving agency operations.

§101.119. Confidentiality of Consumer Information in the Specialized Telecommunications Assistance Program.

(a) All information made available to Department employees in the course of the application process for the Specialized Telecommunications Assistance Program (STAP), administered under Chapter 109

of this title (relating to Office for Deaf and Hard of Hearing Services), including lists of names and addresses, is limited to use for purposes directly connected with the administration of the STAP.

(b) The Department may not advertise, distribute, or publish the name or addresses or other related information received by the Department about an individual who applies for assistance under STAP. Information concerning the STAP is exempted from disclosure under the Public Information Act.

(c) All STAP applicant information is the sole property of the Department.

§101.121. Comparable Services and Benefits.

In providing rehabilitation services, the Department considers any comparable services and benefit available to a consumer under any other program.

§101.123. Fees for Department Publications.

The Department establishes and charges reasonable fees for some or all Department publications to cover the Department's publication costs. However, the Department will waive the fee if a person who is disabled is financially unable to pay for the publication. The determination whether an individual is financially unable to pay for a publication will be based upon a review of the circumstances including information submitted by the person who is disabled.

§101.131. Payment of Shift Differentials.

(a) The Assistant Commissioners are authorized to pay a shift differential to eligible employees in the vocational rehabilitation program. The shift differential shall be paid in addition to the employee's regular base pay, exclusive of longevity and benefit replacement pay.

(b) The Assistant Commissioners are authorized to determine the agency positions which are eligible to receive shift differential payments. The rate of payment shall be a percentage of the employee's monthly regular base pay, not to exceed the maximum allowed by state law, in relation to the number of hours the employee regularly works outside the work hours of Monday through Friday, 8:00 a.m. to 5:00 p.m.

(c) This section shall not apply to those employees whose work hours have been adjusted according to agency policies concerning staggered work hours.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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SUBCHAPTER B. PURCHASE OF GOODS AND SERVICES

40 TAC §§101.201, 101.203, 101.209, 101.211, 101.213

The new rules are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of

health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.201. Purchases for Individual Consumers.

Purchases of goods and/or services for individual consumers must be consistent with the Individualized Plan for Employment (IPE) which is jointly developed by the DRS or DBS Counselor and eligible consumer.

(1) The IPE includes, but is not limited to:

(A) goals and intermediate objectives for which the goods and services are necessary;

(B) estimated date of initiation of the service, and the estimated duration of the service;

(C) services and service providers chosen by the consumer from among alternatives presented by the DRS or DBS Counselor;

(D) participation by the consumer in the cost of the goods and services;

(E) terms and conditions applicable to the purchase of the goods and services; and

(F) comparable services and benefits applicable to the services to be purchased.

(2) In developing an individual's IPE, DARS provides the individual, or assists the individual in acquiring, information necessary to make an informed choice from among alternative services and providers of services that are needed to achieve the goal of the IPE.

(3) In developing an IPE, and prior to purchasing any service for a consumer, DARS determines whether comparable services and benefits exist under any other program, and whether those services or benefits are available to the individual consumer. If comparable services or benefits exist and are available to the consumer within a reasonable period of time, DARS shall use those comparable services and/or benefits to meet, in whole or in part, the cost of services. If DARS and another resource are paying for a good or service for a consumer, the payment by the other resource must be applied first.

(4) DARS may establish reasonable fee schedules for purchased consumer goods and services. These fee schedules are designed to ensure the lowest reasonable cost and best value.

(5) DARS issues purchase orders for all purchases of goods and services for individual consumers. Purchase orders serve as prior written authorization of the purchase, establish the terms and conditions of the purchase, and obligate DARS to pay for the goods and/or services which are delivered by the provider and received by the consumer.

(6) DARS establishes and maintains policies for competitive purchasing of consumer goods and services which exceed the unit dollar value specified.

§101.203. Standards for Facilities and Providers of Services.

(a) Facilities and providers of services used by the Department in providing vocational rehabilitation services are required to satisfy the following minimum standards.

(1) Staff providing services shall be competent, professionally ethical, and qualified for positions held. Qualifications of staff shall meet all requirements established by recognized professional groups and/or state certification regulations. The facility or provider shall assure that all staff meet minimum qualifications; staff credentials supporting those qualifications shall be on file at the time of hire; and staff credentials shall be made available to any Department monitors.

(2) The facility shall include among the staff, or shall obtain the services of, individuals able to communicate in the native language of applicants and consumers who have limited English speaking ability; and ensure that appropriate modes of communication are used for all consumers.

(3) Providers of vocational rehabilitation services shall take affirmative action to employ and advance in employment qualified individuals with disabilities.

(4) The facility shall provide for such fiscal control and fund accounting as may be necessary to assure proper disbursement and accounting of funds provided by the Department and in accordance to program policy.

(5) The facility shall observe consumers personnel policies and practices which focus on the needs and goals of the individual.

(6) The facility shall maintain accurate and complete records and prepare and distribute reports necessary to the achievement of its goals.

(7) Any facility in which services are provided must be:

(A) such that the safety and health of the staff and consumers are protected;

(B) accessible to individuals receiving services and must comply with the requirements of the Architectural Barriers Act of 1968, the Uniform Accessibility Standards, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act.

(b) The Department does not operate, license, certify, or register facilities or providers under the Human Resource Code, §48.036, but does assure that services provided comply with standards set by the Department.

(c) Any additional standards the Department publishes for facilities and providers will be made available to the public.

(d) All services provided to consumers of the Department are monitored by the agency.

§101.209. Alternative Purchasing Methods--Rates for Medical Services.

Pursuant to Human Resources Code, §117.074, this rule adopts standards governing the determination of rates paid for medical services provided by the Department. The rates determined under these standards will be reevaluated annually.

(1) Rates will be established based on Medicare and Medicaid schedules for current procedural terminology (CPT). Where Medicare and Medicaid schedules are not applicable, rates that represent best value will be established based upon factors that include reasonable and customary industry standards for each specific service.

(2) Rates will be established at a level adequate to ensure availability of qualified providers, and in adequate numbers to provide assessment and treatment, and within a geographic distribution that mirrors consumer/claimant distribution.

(3) Exceptions to established rates can be made on a case by case basis by the DARS medical director and/or optometric consultant.

§101.211. Schedule of Rates.

Pursuant to Human Resources Code, §117.074, and §101.209 of this title (relating to Alternative Purchasing Methods--Rates for Medical Services), the Executive Commissioner of the Health and Human Services Commission has established a schedule of rates based on the standards adopted under §101.209 of this title. The schedule of rates will be reevaluated annually. Notice will be provided to interested persons

and allow those persons to present comments before adopting a new or revised schedule of rates. The schedule of rates may be viewed or copies may be obtained by calling the Department of Assistive and Rehabilitative Services at (800) 628-5115 or visiting the Department at 4800 North Lamar, Austin, Texas, 78756.

§101.213. Contracts for Deaf and Hard of Hearing Services.

(a) Before the Department contracts with or provides a grant to an agency, organization, or individual to provide direct services to persons who are deaf or hard of hearing, the Department makes reasonable efforts to notify all potential service providers of the availability and purpose of the contract or grant.

(b) The notice includes a request that all interested service providers submit within a specified period a contract or grant proposal for the Department's consideration. The notice also states the criteria that the Department will consider in determining which applicant will be awarded the contract or grant.

(c) The Department reviews all proposals submitted under this section and awards the contract or grant to the applicant that the Department determines is best able to provide the needed services. The Department may not award contracts or grants to a former employee of the Office for Deaf and Hard of Hearing Services within two years after the person's employment with the Office ceased.

(d) To ensure an equitable distribution of contract or grant funds, the Department has developed a formula to allocate those funds among the agencies, organizations, or individuals that are awarded the contracts or grants.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



SUBCHAPTER C. HISTORICALLY UNDERUTILIZED BUSINESSES

40 TAC §§101.551, 101.553, 101.555, 101.557

The new rules are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.551. Purpose.

The purpose of this subchapter is to establish the authority and responsibility to promote full and equal business opportunities for all businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study. It is the policy of the State of Texas and the Department of Assistive and Rehabilitative Services to encourage the use of historically underutilized businesses (HUBs) and to implement this policy through race, ethnic, and gender-neutral means.

§101.553. Applicability.

This subchapter applies to all contracts and purchase orders established under the requirements of Government Code Chapter 2155. It also applies to all bids, proposals, offers, or other applicable expressions of interest over \$100,000 as defined in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter B, §111.14 and Government Code Chapter 2161 Subchapter F relating to HUB subcontracting responsibilities.

§101.555. Definitions.

In this subchapter, the following definitions apply.

(1) Economically Disadvantaged Person--A person who is economically disadvantaged because of the person's identification as a member of a certain group, as defined in 1 TAC §111.12 (relating to Definitions), and who has suffered the effects of discriminatory practices or other similar insidious circumstances over which the person has no control.

(2) Good Faith Effort (GFE)--Evidence of certain criteria used by prime contractors to promote inclusion of HUBs in contracts with an expected value of \$100,000 or more as defined in 1 TAC §111.13 and §111.14 (relating to Annual Procurement Utilization Goals and Subcontracts). When applied to agency GFE, the state auditor shall consider whether the agency has adopted rules under §2161.003, Government Code; has used the Texas Building and Procurement Commission (TBPC) directory and other resources to identify HUBs that are able to contract with the agency; made good faith, timely efforts to contact identified HUBs regarding contracting opportunities; and conducted its procurement program in accordance with the good faith methodology set out in TBPC rules.

(3) Historically Underutilized Business (HUB)--A business entity that is a corporation, sole proprietorship, partnership, joint venture, etc. owned and operated by an economically disadvantaged person or persons as defined in 1 TAC §111.12 (relating to Definitions) with its principal place of business in Texas.

(4) HUB Subcontracting Plan (HSP)--a plan required to be submitted with bids, proposals, offers, or other applicable expressions of interest that determine or describe HUB subcontracting opportunities probable under the contract as defined in 1 TAC §111.13 and §111.14 (relating to Annual Procurement Utilization Goals and Subcontracts).

§101.557. Adoption of Rules.

In accordance with Government Code §2161.003, the Department of Assistive and Rehabilitative Services adopts the rules of the Texas Building and Procurement Commission at 1 TAC Chapter 111, Subchapter B (relating to Historically Underutilized Business Program), which rules were promulgated by the General Services Commission pursuant to Government Code, §2161.002.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

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Department of Assistive and Rehabilitative Services

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SUBCHAPTER D. COUNCILS AND COMMITTEES

40 TAC §§101.601, 101.603, 101.605

The new rules are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.601. Rehabilitation Council of Texas.

(a) Legal basis. The Rehabilitation Council of Texas is created pursuant to the Rehabilitation Act of 1973, as amended, 29 United States Code §725, and the Human Resource Code, §111.016. The federal law requires that the Department establish the Rehabilitation Council of Texas in order to receive federal financial assistance. Failure to establish the Council would prohibit federal financial assistance. In accordance with Human Resources Code, §111.0161, the Council reports to and advises the Executive Commissioner or designee on the committee's activities and the results of the committee's work. For the purpose of performing its advisory functions, the Council works with the DARS Commissioner, the DARS commission staff, and the Executive Commissioner or designee.

(b) Purpose. The Rehabilitation Council of Texas advises the Department of Assistive and Rehabilitative Services, Division for Rehabilitation Services and Division for Blind Services regarding the performance of the responsibilities of the Divisions in the provision of vocational rehabilitation services for individuals with disabilities.

(c) Tasks. The council shall:

(1) review, analyze, and advise the Divisions regarding the performance of responsibilities, particularly responsibilities relating to:

(A) eligibility (including order of selection);

(B) the extent, scope, and effectiveness of services provided; and

(C) functions performed by state agencies that affect or that potentially affect the ability of individuals with disabilities in achieving rehabilitation goals and objectives;

(2) advise the Divisions and at its discretion, assist in the preparation of applications, the state plan, the strategic plan, and amendments to the plans, reports, needs assessments, and evaluations required;

(3) to the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with:

(A) the functions performed by state agencies and other public and private entities responsible for performing functions for individuals with disabilities; and

(B) vocational rehabilitation services:

(i) provided, or paid for from funds made available, under 29 United States Code Annotated, §725, or through other public or private sources; and

(ii) provided state agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities;

(4) coordinate with other councils within the state, including the State Independent Living Council established under 29 United

States Code §796d, the advisory panel established under 20 United States Code §1431(a)(12), the State Planning Council described in 42 United States Code §6024, and the State Mental Health Planning Council established under 42 United States Code §300x-4(e);

(5) advise the Divisions and provide for coordination and the establishment of working relationships between the Divisions and the State Independent Living Council and centers for independent living within the state; and

(6) perform such other functions consistent with the Rehabilitation Act of 1973, as amended, as the council determines to be appropriate that are comparable to other functions performed by the council.

(d) Reports. The council shall:

(1) prepare and submit an annual report to the governor or appropriate state entity and the commissioner on the status of vocational rehabilitation programs operated within the state, and make the report available to the public; and

(2) submit to the commissioner of the Rehabilitation Services Administration, United States Department of Education such periodic reports as the commissioner may reasonably request, and keep such records as the commissioner finds necessary to verify such reports.

(e) Funding. The council is funded primarily by federal funds and its existence is required in order to receive and expend federal funds.

(f) Duration of council. The council will be abolished on December 31, 2009.

§101.603. State Independent Living Council.

(a) Legal basis. The State Independent Living Council is created pursuant to the Rehabilitation Act of 1973, as amended, 29 United States Code §796d. Failure to establish the council would prohibit federal financial assistance.

(b) Purpose. The Rehabilitation Act of 1973, as amended, 29 United States Code §796d, requires that each state shall establish a State Independent Living Council (SILC).

(c) Tasks. The State Independent Living Council shall:

(1) in conjunction with the Department of Assistive and Rehabilitative Services, jointly develop and submit the State Plan for Independent Living services as required by federal law;

(2) monitor, review, and evaluate the implementation of the State Plan for Independent Living;

(3) coordinate activities with the Rehabilitation Council of Texas set out in §101.601 of this title (relating to the Rehabilitation Council of Texas) and other councils that address the needs of specific disability populations and issues under other federal law;

(4) ensure that all regularly scheduled meetings of the council are open to the public and sufficient advance notice is provided;

(5) submit to the federal government such periodic reports as the federal government may reasonably request, and keep such records as the federal government finds necessary to verify such reports; and

(6) report to the Department of Assistive and Rehabilitative Services Council at least annually on the council's actions and the results of the council's work.

(d) Funding. The council is funded primarily by federal funds and its existence is required in order to receive and expend federal funds.

(e) Duration of council. The council will be abolished on December 31, 2009.

§101.605. Early Childhood Intervention Advisory Committee.

(a) The purpose of these sections is to establish the size, composition, terms of office, duties, and procedures of an advisory committee to assist the Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services in its duties. The sections implement the provisions in:

(1) the Human Resources Code, §73.004, concerning an advisory committee to assist the Department; and

(2) the federal regulations covering an advisory committee to the Department in 34 Code of Federal Regulations, Part 303, Subpart G.

(b) Size. The advisory committee shall consist of 24 members which the governor shall appoint.

(c) Composition. The advisory committee shall be composed as follows.

(1) Official members must include:

(A) at least seven parents, including minority parents of infants or toddlers with developmental disabilities or delays or children with developmental disabilities or delays aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with developmental disabilities. At least one such member shall be a parent of an infant or toddler with a developmental disability or delay or a child with a developmental disability or delay aged six or younger, and no parent may be an employee of an early childhood intervention funded program;

(B) at least five public or private providers of early childhood intervention services, one of whom is a preschool specialist and a provider of birth to three services in an educational service center;

(C) at least one representative from the Texas Legislature;

(D) at least one person involved in personnel preparation;

(E) at least one representative from each of the following agencies and public program: the Health and Human Services Commission, the Department of Aging and Disability Services, the Department of State Health Services, the Department of Family and Protective Services; the Texas Education Agency; the Texas Department of Insurance; the Office of Coordination for Education of Homeless Children and Youth; and Head Start. The representative must have sufficient authority to engage in policy planning and implementation on behalf of his or her agency. The Texas Education Agency representative must be responsible for preschool services to children with disabilities;

(F) a physician, preferably a pediatrician who deals with children with developmental disabilities; and

(G) a professional advocate of the rights of young children with developmental disabilities.

(2) Ex officio members may be appointed by the Department to perform specific, time-limited tasks as needed. The Department determines voting status of ex officio members.

(d) Terms of office. Official advisory committee members shall serve staggered six-year terms of office, with the terms of eight members expiring February 1 of each odd number year.

(e) Chairperson. The advisory committee shall appoint the chairperson of the advisory committee.

(f) The advisory committee shall:

(1) advise and assist the Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services in the development and implementation of the policies that constitute the statewide ECI system;

(2) advise and assist the state educational agency regarding appropriate services and the transition of toddlers with developmental disabilities to services provided under IDEA, Part B, 20 U.S.C. Sec. 1411 - 1419 to the extent such services are appropriate;

(3) assist the Department in achieving the full participation, coordination, and cooperation of all appropriate public agencies in the state; and

(4) assist the Department in the effective implementation of the statewide system, by establishing a process that includes:

(A) seeking information from service providers, case managers (service coordinators), parents, and others about any federal, state, or local policies that impede timely service delivery; and

(B) taking steps to ensure that any policy problems identified in subparagraph (A) of this paragraph are resolved; and

(5) to the extent appropriate, assist the Department in the resolution of disputes.

(g) The advisory committee shall advise and assist the Department in the:

(1) identification of sources of fiscal and other support for services for early intervention programs under this chapter;

(2) assignment of financial responsibility to the appropriate agency; and

(3) promotion of the interagency agreements.

(h) The advisory committee shall advise and assist the Department in the preparation of applications under this chapter, and amendments to those applications.

(i) The advisory committee shall:

(1) with assistance from the Department prepare an annual report to the governor and to the secretary of the United States Department of Education (secretary) on the status of early intervention programs operated within the state for children eligible under this chapter and their families; and

(2) submit the report to the secretary by a date that the secretary establishes.

(j) Each annual report must contain the information required by the secretary for the year for which the report is made.

(k) The committee may advise and assist the Department and the Texas Education Agency regarding the provision of appropriate services for children aged birth to five, inclusive.

(l) Notice, frequency, and location of meetings.

(1) All advisory committee meetings are subject to the Government Code, Chapter 551. Written notice of the date, time, place, and subject of each meeting shall be posted with the Texas Register Division, secretary of state's office, as required by the Code.

(2) The Assistant Commissioner shall send a copy of the notice of each meeting to each advisory committee member at least one week prior to the meeting.

(3) Meetings will be held at least quarterly and generally will be held in Austin.

(m) Robert's Rules of Order. All meetings will be conducted according to Robert's Rules of Order, except that:

(1) the chairperson may vote on any action as any other advisory committee member, and in case of a tie vote the chairperson's vote will be the tiebreaker; and

(2) all actions taken by the advisory committee must be approved by a majority vote of the members present at the meeting.

(n) Public participation. All requests from the public to participate in advisory committee meetings must be submitted to the chairperson.

(o) Absence of chairperson. If the chairperson will be absent from a meeting, he/she may designate another member to act as chairperson and to have all powers and responsibilities of the chairperson for that meeting.

(p) Compensatory per diem. Official and ex officio members who attend meetings may be reimbursed for expenses for meals, lodging, and transportation as established in the current Texas State Appropriations Act, Article IX. The official and ex officio members who are parents are entitled to reimbursement for child care. All official and ex officio members are entitled to reimbursement for attendant care.

(q) Interpreters. Interpreters for persons who are deaf and other necessary services must be provided at the advisory committee meeting, both for advisory committee members and participants.

(r) Conflict of interest. No advisory committee members may vote on any subject at a meeting which would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest.

(s) Absences from meetings. The Department of Assistive and Rehabilitative Services may recommend to the governor the removal of any advisory committee member who is absent from more than half of the regularly scheduled meetings of the advisory committee that the member is eligible to attend during each calendar year or is absent from more than two consecutive regularly scheduled meetings that the member is eligible to attend.

(t) Duration. The committee will be abolished on December 31, 2009.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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SUBCHAPTER F. DURABLE MEDICAL
EQUIPMENT AND ASSISTIVE TECHNOLOGY
LISTING
DIVISION 2. DIVISION FOR BLIND SERVICES
APPEALS AND HEARING PROCEDURES

**40 TAC §§101.1001, 101.1003, 101.1005, 101.1007,
101.1009, 101.1011**

The Texas Health and Human Services Commission proposes amendments to the rules of the Department of Assistive and Rehabilitative Services in Title 40, Part 2, Chapter 101, relating to Administrative Rules and Procedures, by proposing new Subchapter F, Durable Medical Equipment and Assistive Technology Listing, §§101.1001, 101.1003, 101.1005, 101.1007, 101.1009 and 101.1011.

This change is being proposed to update administrative and program rules from the former Texas Rehabilitation Commission, which was consolidated into the Department of Assistive and Rehabilitative Services (DARS) in 2004, by setting forth a single set of rules applicable to the technology listing activities of DARS as provided by House Bill 2292, 78th Legislature, Regular Session. Rules relating to technology listing activities were previously contained in Chapter 107, Subchapter G of this title, relating to Rehabilitation Services. The repeal of those rules is contemporaneously proposed elsewhere in this issue of the *Texas Register*.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the rules will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the rules will be in effect, the public benefit anticipated as a result of adopting the proposed rules will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the rules as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed rules will not affect a local economy.

Comments on the proposal may be submitted to Barbara Lazard, Assistant General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756-3178.

The new rules are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§101.1001. Legal Basis and Purpose.

The Durable Medical Equipment and Assistive Technology Listing is created pursuant to Title 7, Human Resources Code, Chapter 116. Its purpose is to facilitate the reuse of durable medical equipment and assistive technology.

§101.1003. Definition.

In this subchapter, "durable medical equipment and assistive technology" means devices which are not consumable, not custom fitted making them unusable by others, and which assist persons with disabilities in performing functions or activities that they are incapable of or have difficulty in performing because of their disabilities, such as: moving, walking, standing, speaking, breathing, hearing, seeing, learning, working, driving or riding in motor vehicles, sleeping, reaching, grasping, or caring for themselves.

§101.1005. Listing Items for Donation.

(a) The department maintains a toll-free telephone number which may be used by individuals and organizations to list with the department items of durable medical equipment and assistive technology that are available for donation. The listing is made available to the public through the Internet. Donors wishing to list items using the department's toll-free number will provide their name (optional), and telephone number, identification of the item to be donated, and city or county where the item is located (mandatory).

(b) Before accepting a listing, the department must obtain the consent of the donor to make available to the public the listing of personal information provided through the Internet. If the donor is an individual, the donor's prior written consent for release of name and/or telephone number, to the department must occur.

(c) Any items owned by the state and listed with the department, if donated, must be donated to a nonprofit organization licensed under the Health and Safety Code, Chapter 432, for distribution to indigent individuals. Before the department may accept a listing for an item owned by the state, the donor agency must agree that while listed, the item will be donated only to a nonprofit organization licensed under the Health and Safety Code, Chapter 432, for distribution to indigent individuals.

(d) Individuals and organizations wishing to cancel a listing should contact the department using the toll-free number, or in writing.

§101.1007. Stickers for Retailers.

The department has designed a sticker that contains an informative statement about the durable medical equipment and assistive technology listing, and the toll-free telephone number, which shall be affixed by retailers to items of durable medical equipment or assistive technology as provided by Title 7, Human Resources Code, Chapter 116. The department provides the stickers at no charge to each retailer of durable medical equipment or assistive technology in the state who requests stickers or has been identified by the 800 operator for request. To obtain additional stickers, contact the department as the department is the only source to distribute.

§101.1009. Referral of Individuals.

When individuals contact the department with items of durable medical equipment and assistive technology available for donation, they will be referred to organizations licensed under the Health and Safety Code, Chapter 432. Licensed medical device salvage brokers and establishments that wish to appear on the department's referral list should submit to the department a written request and a copy of their current license issued by the Department of State Health Services.

§101.1011. Local Organizations.

It is the policy of the department to encourage the establishment of local organizations to facilitate the reuse of durable medical equipment and assistive technology. Upon request, the department will provide information to local organizations about the license required under the Health and Safety Code, Chapter 432, to distribute salvaged merchandise.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

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CHAPTER 105. GENERAL CONTRACTING RULES

SUBCHAPTER F. CLAIMS FOR BREACH OF CONTRACT

40 TAC §§105.1403, 105.1405, 105.1407, 105.1409, 105.1411, 105.1413, 105.1415, 105.1417, 105.1419, 105.1421, 105.1423, 105.1425

The Texas Health and Human Services Commission proposes amendments to the rules of the Department of Assistive and Rehabilitative Services in Title 40, Part 2, Chapter 105, Subchapter F, relating to Claims for Breach of Contract. This proposal adds new §§105.1403, 105.1405, 105.1407, 105.1409, 105.1411, 105.1413, 105.1415, 105.1417, 105.1419, 105.1421, 105.1423, and 105.1425.

The new rules are being proposed to replace rules currently in Chapter 101, Subchapter F, Division 4 of this title, relating to Contract Dispute Resolution. The repeal of those rules is contemporaneously proposed elsewhere in this issue of the *Texas Register*.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the rules will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the rules will be in effect, the public benefit anticipated as a result of adopting the proposed rules will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the rules as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed rules will not affect a local economy.

Comments on the proposal may be submitted to Barbara Lazard, Assistant General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756-3178.

The new rules are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of

health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§105.1403. Definitions.

These definitions supplement definitions in Government Code, Chapter 2260. The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

(1) Claim--A demand for damages by the contractor based upon the Department of Assistive and Rehabilitative Services (DARS) alleged breach of the contract.

(2) Counterclaim--A demand by DARS based upon the contractor's claim.

(3) Day--A calendar day. If an action is required to occur on a day falling on a Saturday, Sunday, or state or federal holiday, the next working day that is not one of these days should be counted as the required day for purpose of the action.

(4) Event--An act or omission or a series of acts or omissions giving rise to a claim.

(5) Mediation--A consensual process in which an impartial third party, the mediator, facilitates communication between the parties to promote reconciliation, settlement, or understanding among them.

(6) Negotiation--A consensual bargaining process in which the parties attempt to resolve a claim and counterclaim.

(7) Parties--DARS and contractor that have entered into a contract in connection with which a claim of breach of contract has been filed under this subchapter.

§105.1405. Notice of Claim.

(a) A contractor asserting a claim of breach of contract under Government Code, Chapter 2260, must file notice of the claim in accordance with requirements of Government Code, Chapter 2260 and this section.

(b) The notice of claim must:

(1) be in writing and signed by the contractor or the contractor's authorized representative;

(2) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the Department of Assistive and Rehabilitative Services (DARS) Commissioner or designee; and

(3) state in detail:

(A) the nature of the alleged breach of contract, including the date of the event that the contractor asserts as the basis of the claim and each contractual provision allegedly breached;

(B) a description of damages that resulted from the alleged breach, including the amount and method used to calculate those damages; and

(C) the legal theory of recovery, i.e., breach of contract, including the causal relationship between the alleged breach and the damages claimed.

(c) The contractor may submit supporting documentation or other tangible evidence to facilitate DARS' evaluation of the contractor's claim.

§105.1407. Negotiation Timetable.

(a) The parties will negotiate in accordance with the time-frames established in Government Code, Chapter 2260. No party is obligated to settle with the other party as a result of the negotiation.

(b) If the parties agree to extend the time for negotiations, they will enter into a written agreement that is signed by representatives of the parties with authority to bind each respective party. The agreement will provide for the specific date by which the negotiations will be completed. The parties may enter into a series of written extension agreements that comply with the requirements of this section.

(c) Nothing in this section is intended to prevent the parties from agreeing to commence negotiations earlier than the deadlines established in Government Code, Chapter 2260 or from continuing or resuming negotiations after the contractor requests a contested case hearing before the State Office of Administrative Hearings (SOAH).

§105.1409. Conduct of Negotiations.

A negotiation under this subchapter may be conducted by any method, technique, or procedure agreed upon by the parties, including, without limitation, negotiation in person, by telephone, by correspondence, by video conference, or by any other method that permits the parties to identify their respective positions, discuss their respective differences, confer with their respective advisers, exchange offers of settlement, and settle.

§105.1411. Negotiation Settlement Approval Procedures.

The parties' settlement approval procedures must be disclosed prior to, or at the beginning of negotiations. To the extent possible, the parties must select negotiators who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

§105.1413. Settlement Agreement After Negotiation.

(a) A settlement agreement may resolve an entire claim or any portion of a claim.

(b) A settlement agreement must be in writing and signed by representatives of the contractor and the Department of Assistive and Rehabilitative Services who have authority to bind each respective party.

§105.1415. Costs of Negotiation and Mediation.

(a) Unless the parties agree otherwise, each party will be responsible for its own costs incurred in connection with a negotiation and mediation, including, without limitation, the costs of attorney's fees, consultant's fees, expert's fees, and documents requested by each party.

(b) The costs of the mediation process itself will be divided equally between the parties.

§105.1417. Agreement to Mediate.

The parties may agree to use mediation as an option to resolve a breach of contract claim if both parties agree.

§105.1419. Conduct of Mediation.

(a) The parties' settlement approval procedures must be disclosed by the parties prior to the mediation.

(b) The mediator must be acceptable to both parties.

(c) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Government Code, Chapter 2009.

(d) To the extent possible, the parties must select representatives who are knowledgeable about the subject matter of the dispute that resulted in the claim for breach of contract, who are in a position

to reach agreement, and who can credibly recommend approval of an agreement.

§105.1421. Qualifications and Immunity of Mediator.

(a) The mediator must possess the qualifications required for an impartial third party under Civil Practice and Remedies Code, Chapter 154, be subject to the standards and duties prescribed by Civil Practice and Remedies Code, Chapter 154, and will have the qualified immunity of impartial third parties prescribed by Civil Practice and Remedies Code, Chapter 154, if applicable.

(b) The parties should decide whether, and to what extent, knowledge of the subject matter and experience in mediation would be advisable for the mediator.

(c) The parties should obtain from the prospective mediator the ethical standards that will govern the mediation.

§105.1423. Mediation Settlement Agreement Procedures.

(a) An initial agreement must describe any procedures required to be followed by the parties in connection with final approval of the agreement.

(b) Any initial or final settlement agreement reached during or as a result of mediation that resolves an entire claim or any designated and severable portion of a claim must be in writing and signed by representatives of both parties who have authority to bind each respective party.

(c) If a settlement agreement does not resolve all issues raised by the claim and counterclaim, the agreement must identify the issues that are not resolved.

§105.1425. Confidentiality of Mediation and Final Settlement Agreement.

(a) A mediation conducted under this section is confidential in accordance with Government Code, Chapter 2009.

(b) The confidentiality of a final settlement agreement to which the Department of Assistive and Rehabilitative Services is signatory that is reached as a result of the mediation is governed by Government Code, Chapter 552.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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CHAPTER 106. BLIND SERVICES
SUBCHAPTER A. APPEALS AND HEARING
PROCEDURES
DIVISION 1. VOCATIONAL REHABIL-
ITATION AND INDEPENDENT LIVING
PROGRAMS

40 TAC §§106.19, 106.23, 106.25, 106.27, 106.29, 106.30,
106.33, 106.34, 106.37, 106.39, 106.41, 106.43, 106.45,

106.47, 106.49, 106.51, 106.53, 106.55, 106.57, 106.59, 106.61, 106.63, 106.65, 106.67, 106.69, 106.71, 106.73, 106.75, 106.77, 106.79, 106.81, 106.83, 106.85, 106.87, 106.89, 106.91

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Health and Human Services Commission proposes amendments to the rules of the Department of Assistive and Rehabilitative Services in Title 40, Part 2, Chapter 106, concerning Blind Services. This proposal repeals Subchapter A, Division 1, §§106.19, 106.23, 106.25, 106.27, 106.29, 106.30, 106.33, 106.34, 106.37, 106.39, 106.41, 106.43, 106.45, 106.47, 106.49, 106.51, 106.53, 106.55, 106.57, 106.59, 106.61, 106.63, 106.65, 106.67, 106.69, 106.71, 106.73, 106.75, 106.77, 106.79, 106.81, 106.83, 106.85, 106.87, 106.89 and 106.91, concerning Appeals and Hearing Procedures for Vocational Rehabilitation and Independent Living Programs.

Elsewhere in this issue of the *Texas Register*, the Department of Assistive and Rehabilitative Services contemporaneously proposes rules in Chapter 101, in a new Subchapter E, Appeals and Hearing Procedures for Vocational Rehabilitation and Independent Living Programs.

The repeal and new rules are being proposed to clarify and update program rules from the former Texas Commission for the Blind, which was consolidated into the Department of Assistive and Rehabilitative Services in 2004, into agency-wide appeals and hearings rules applicable to all vocational rehabilitation and independent living programs now administered by Department of Assistive and Rehabilitative Services, as provided by House Bill 2292, 78th Legislature, Regular Session.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the repeal will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of repealing the rules will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the repeal as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022,

the Health and Human Services Commission has determined that the proposed repeal will not affect a local economy.

Comments on the proposal may be submitted to Barbara Lazard, Assistant General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756-3178.

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

- §106.19. *Purpose and Scope.*
- §106.23. *Legal Authority and Scope.*
- §106.25. *Definitions.*
- §106.27. *Filing a Request for Review.*
- §106.29. *Time for Hearing.*
- §106.30. *Computation of Time.*
- §106.33. *Filings.*
- §106.34. *Assignment of Impartial Hearing Officer.*
- §106.37. *Powers and Duties of the Impartial Hearing Officer.*
- §106.39. *Substitution of Impartial Hearing Officer.*
- §106.41. *Reasonable Accommodations.*
- §106.43. *Appearance of Parties at Hearings; Representation.*
- §106.45. *Failure to Attend Hearing and Default.*
- §106.47. *Representation and Attorney Fees.*
- §106.49. *Witness Fees.*
- §106.51. *Notices.*
- §106.53. *Prehearing Conferences.*
- §106.55. *Dismissal Without Hearing.*
- §106.57. *Discovery.*
- §106.59. *Motions.*
- §106.61. *Orders.*
- §106.63. *Settlement Conferences.*
- §106.65. *Stipulations.*
- §106.67. *Conduct of Hearing.*
- §106.69. *Order of Proceedings.*
- §106.71. *Exhibits.*
- §106.73. *Transcription of Proceedings.*
- §106.75. *Documentary Evidence and Official Notice.*
- §106.77. *Prepared Testimony.*
- §106.79. *Offer of Proof.*
- §106.81. *Pleadings.*
- §106.83. *Continuance.*

§106.85. *Impartial Hearing Officer Decision.*

§106.87. *Implementation of Final Decision.*

§106.89. *Appeal of Final Decision.*

§106.91. *Mediation Procedures.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



CHAPTER 106. DIVISION FOR BLIND SERVICES

The Texas Health and Human Services Commission proposes amendments to the rules of the Department of Assistive and Rehabilitative Services, Title 40, Part 2, Chapter 106, concerning Blind Services. This proposal repeals Chapter 106, Subchapter A, Division 2, §§106.121, 106.123, 106.125, 106.127, 106.129, 106.131, 106.133, 106.135 and 106.137; Subchapter B, Division 1, §106.305; Subchapter B, Division 2, §§106.321, 106.323, 106.325, 106.327, 106.329, 106.331, 106.333, 106.335, 106.337, 106.339, 106.341, 106.343 and 106.345; Subchapter D, Division 1, §106.857; Subchapter I, Division 3, §106.1459 and Subchapter N, §§106.1901, 106.1903, 106.1905, 106.1907, 106.1909, 106.1911, 106.1913, 106.1915, 106.1917, 106.1919, 106.1921 and 106.1923. This proposal also amends Subchapter B, Criss Cole Rehabilitation Center, Division 1, §106.302 and §106.303; Subchapter C, Vocational Rehabilitation Program, Division 1, §§106.503, 106.505, 106.507, and 106.509; Subchapter C, Division 2, §§106.523, 106.525, 106.527, 106.529, 106.531, 106.533 and 106.535; Subchapter C, Division 3, §§106.551, 106.553, 106.557, 106.559, 106.561, 106.564, 106.566, 106.574, 106.578, 106.580 and 106.582; Subchapter C, Division 4, §106.605; Subchapter C, Division 5, §§106.621, 106.623, 106.625, 106.627, 106.631 and 106.633; Subchapter C, Division 6, §106.651; Subchapter C, Division 7, §106.661; Subchapter C, Division 8, §§106.671, 106.673 and 106.675; Subchapter D, Independent Living Program, Division 1, §106.851 and §106.855; Subchapter D, Division 2, §§106.873, 106.875, 106.877, 106.879 and 106.881; Subchapter D, Division 3, §106.901 and §106.903; Subchapter D, Division 5, §§106.931, 106.933, 106.935, 106.937, 106.939 and 106.941; Subchapter D, Division 6, §106.965; Subchapter F, Blindness Education, Screening and Treatment Program, §§106.1101, 106.1103, 106.1105 and 106.1107; Subchapter G, Business Enterprises of Texas, §§106.1201, 106.1203, 106.1205, 106.1207, 106.1211, 106.1213, 106.1215, 106.1217, 106.1219, 106.1221, 106.1223, 106.1225, 106.1227, 106.1229, 106.1231 and 106.1233; Subchapter I, Blind Children's Vocational Discovery and Development Program, Division 1, §§106.1401, 106.1403, 106.1405, 106.1407, 106.1409, 106.1411 and 106.1413; Subchapter I, Division 2, §§106.1421, 106.1423, 106.1425, 106.1427, 106.1429 and 106.1433; Subchapter I, Division 3, §§106.1445, 106.1447, 106.1449, 106.1451, 106.1453, 106.1455, 106.1457, 106.1461 and 106.1463; Subchapter I, Division 5, §§106.1485, 106.1487, and 106.1489;

Subchapter I, Division 6, §106.1501 and Subchapter M, Donations, §§106.1801, 106.1803, 106.1805, 106.1807, 106.1809, 106.1811, and 106.1813.

This proposal also changes the title of Chapter 106 from "Blind Services" to "Division for Blind Services".

The changes are being proposed to clarify and update program rules from the former Texas Commission for the Blind, which was consolidated into the Department of Assistive and Rehabilitative Services in 2004, into rule applicable to programs now administered by the Division for Blind Services, Department of Assistive and Rehabilitative Services, as provided by House Bill 2292, 78th Legislature, Regular Session.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the rules will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the rules will be in effect, the public benefit anticipated as a result of adopting the proposed changes will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the rules as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed rule changes will not affect a local economy.

Comments on the proposal may be submitted to Barbara Lazard, Assistant General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756-3178.

SUBCHAPTER A. APPEALS AND HEARING PROCEDURES

DIVISION 2. BLIND CHILDREN'S VOCATIONAL DISCOVERY AND DEVELOPMENT PROGRAM

40 TAC §§106.121, 106.123, 106.125, 106.127, 106.129, 106.131, 106.133, 106.135, 106.137

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.121. *Statutory Authority and Scope.*

§106.123. *Requests for Informal Review.*

§106.125. *Informal Review Procedures.*

§106.127. *Informal Review Findings.*

§106.129. *Withdrawal or Cancellation of Request for Informal Review.*

- §106.131. *Request for Formal Hearing.*
- §106.133. *Formal Hearing Procedures.*
- §106.135. *Review of Proposal for Decision.*
- §106.137. *Appeal of Final Decision.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

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SUBCHAPTER B. CRISS COLE REHABILITATION CENTER DIVISION 1. GENERAL RULES

40 TAC §106.305

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.305. *CCRC Consumer Handbook.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. INVESTIGATIONS OF ABUSE, NEGLECT, AND EXPLOITATION

40 TAC §§106.321, 106.323, 106.325, 106.327, 106.329, 106.331, 106.333, 106.335, 106.337, 106.339, 106.341, 106.343, 106.345

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of

the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.321. *Purpose.*

§106.323. *Definitions.*

§106.325. *Situations Investigated.*

§106.327. *Reports of Allegations.*

§106.329. *Referrals to Other Agencies.*

§106.331. *Priority of Investigations.*

§106.333. *Timing of Investigations.*

§106.335. *Content of Investigation.*

§106.337. *Classification of Findings.*

§106.339. *Investigation Report.*

§106.341. *Notification of Findings.*

§106.343. *Complaints.*

§106.345. *Confidentiality of Investigative Process and Report.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. INDEPENDENT LIVING PROGRAM

DIVISION 1. GENERAL INFORMATION

40 TAC §106.857

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.857. *Appeals of Determinations.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER I. BLIND CHILDREN'S VOCATIONAL DISCOVERY AND DEVELOPMENT PROGRAM DIVISION 3. SERVICES

40 TAC §106.1459

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1459. *Vision Screening Services.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER N. ENDOWMENT LOAN FUND

40 TAC §§106.1901, 106.1903, 106.1905, 106.1907, 106.1909, 106.1911, 106.1913, 106.1915, 106.1917, 106.1919, 106.1921, 106.1923

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority

to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1901. *Purpose.*
§106.1903. *Availability of Funds.*
§106.1905. *Eligibility.*
§106.1907. *Restrictions.*
§106.1909. *Interest.*
§106.1911. *Application.*
§106.1913. *Payments.*
§106.1915. *Prepayment.*
§106.1917. *Equipment Maintenance.*
§106.1919. *Insurance.*
§106.1921. *Insurance Renewals.*
§106.1923. *Default and Repossession.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. CRISS COLE REHABILITATION CENTER DIVISION 1. GENERAL RULES

40 TAC §106.302, §106.303

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.302. *Services.*

Criss Cole Rehabilitation Center (CCRC) is a comprehensive rehabilitation facility operated by the Division for Blind Services [~~Texas Commission for the Blind~~] in Austin, Texas. CCRC provides services such as functional evaluations, individualized and small group training in communication, home and personal management, orientation and mobility, braille, low vision, health management, nutrition, physical conditioning, social skills, technology awareness, and career guidance. Special summer training is available for consumers in high school who are preparing for higher education. This list is not to be interpreted as comprehensive; ancillary services may also be available.

§106.303. *Referrals.*

(a) A person residing in Texas must be referred to CCRC by one of the Division's [~~Commission's~~] vocational rehabilitation counselors or independent living caseworkers. Individuals residing outside of Texas who are receiving rehabilitation services from an agency

in another state shall be considered for admittance and training on a space-available basis, subject to an agreement between the Division [~~Commission~~] and the state agency on payment of cost of services provided to the individual.

(b) All consumers who are referred to CCRC must be blind. Priority will be for those consumers who are [~~Priority for admission shall be given to consumers who are blind and~~] receiving services from the Division's [~~Commission's~~] Vocational Rehabilitation Program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. VOCATIONAL REHABILITATION PROGRAM

DIVISION 1. GENERAL INFORMATION

40 TAC §§106.503, 106.505, 106.507, 106.509

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.503. *Program and Chapter Purposes.*

The Vocational Rehabilitation Program is a joint state-federal funded program administered by the Department of Assistive and Rehabilitative Services, Division for Blind Services (Division) [~~Texas Commission for the Blind (commission)~~] to assess, plan, develop, and provide vocational rehabilitation services for eligible persons with visual impairments, consistent with their strengths, resources, priorities, concerns, abilities, and capabilities, so that these persons may prepare for and engage in gainful employment.

§106.505. *Conformity to Federal Requirements.*

As required in the Human Resources Code, §91.021(d), the rules in this chapter comply with provisions of the following.

(1) The Rehabilitation Act of 1973 as amended (29 United States Code §701 et seq).

(2) Implementing federal regulations (34 Code of Federal Regulations, Chapter 4, Part 361).

(3) The Division's [~~commission's~~] state plan submitted to and approved by the federal government, which is effective in all political subdivisions of the state.

§106.507. *Public Access to Forms and Documents.*

(a) All forms and documents used in the administration of the Vocational Rehabilitation Program are available for viewing at any Division [~~commission~~] office, including the central office at 4800 North Lamar, Austin, Texas, between 8:00 a.m. and 5:00 p.m. on work days.

(b) Requests for copies are subject to the Division's [~~commission~~] rules regarding charges for public records.

§106.509. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--An individual who has submitted an application for vocational rehabilitation services in accordance with §106.521 [~~§163.10~~] of this title (relating to Application).

(2) Assistive technology device--Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a consumer.

(3) Assistive technology service--Any service that directly assists a consumer in the selection, acquisition, or use of an assistive technology device.

(4) Blind (person who is)--A person whose visual acuity with best correction is 20/200 or less in the better eye, or a person with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees, which means a visual field of no greater than 20 degrees in the better eye.

(5) Comparable services and benefits--Services and benefits that are provided or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits; available to the consumer at the time needed to achieve the intermediate rehabilitation objectives in the individual's individualized plan for employment (IPE); and commensurate to the services that the consumer would otherwise receive from the Division [~~commission~~].

(6) Competitive employment--Work that is performed on a full-time or part-time basis in an integrated setting and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(7) Consumer--An individual with a disability determined eligible for vocational rehabilitation services under the provisions of §106.523 [~~§163.14~~] of this title (relating to Eligibility).

(8) Day--Unless specifically denoted otherwise, refers to one calendar day.

(9) Employment outcome--A person's entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment that is consistent with the consumer's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

(10) Extended employment--Work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.

(11) Extended services--As used in the definition of "supported employment," the ongoing support services and other appropriate services that are needed to support and maintain an individual with a most severe disability in supported employment and that are provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under 34 CFR Part 361, 34 CFR Part 363, 34 CFR Part 376, or 34 CFR

Part 380, after an individual with a most severe disability has made the transition from support provided by the Division ~~[commission]~~.

(12) Extreme medical risk--A probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(13) Integrated setting--

(A) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals other than nondisabled individuals who are providing services to those applicants or eligible individuals;

(B) With respect to an employment outcome, a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals, other than nondisabled individuals who are providing services to those applicants or eligible individuals, to the same extent that nondisabled individuals in comparable positions interact with other persons.

(14) Individual with a disability--An individual with a visual impairment that constitutes or results in a substantial impediment to employment, and who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(15) Individual with a most significant disability--An individual with a significant disability who:

(A) is seriously limited in four or more functional capacities (such as the inability to obtain or retain employment independently, obtain a driver's license without special optical accommodations, care for self independently, access standard print, travel independently, socially interact with others, access technology without special adaptations, or manage one's home independently) in terms of an employment outcome;

(B) requires, in addition to comprehensive assessment, counseling, guidance, and employment assistance, at least four other substantial VR services; and

(C) needs services for a period of at least six months.

(16) Individual with a significant disability--An individual with a disability:

(A) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(B) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(17) Individualized Plan for Employment (IPE)--A written record that documents all phases of the consumer's rehabilitation process as developed by the counselor and the consumer.

(18) Maintenance--Monetary support authorized in an IPE for those expenses, such as food, shelter, clothing, that are in excess of the normal expenses of a consumer or an applicant receiving extended evaluation services and that are necessitated by the person's participation in a program of vocational rehabilitation services.

(19) Ongoing support services--As used in the definition of "supported employment," services that are needed to support and maintain a person with a most significant disability in supported employment, identified based on a determination by the Division ~~[commission]~~ of the person's needs as specified in an IPE; and furnished by the Division ~~[commission]~~ from the time of job placement until transition to extended services, unless post-transition services are provided, following transition; and thereafter by one or more extended services providers throughout the person's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment.

(20) Personal assistance services--A range of services provided by one or more persons that is designed to assist a consumer to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability.

(21) Physical and mental restoration services--The following services:

(A) corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(B) diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with state licensure laws;

(C) dentistry;

(D) nursing services;

(E) necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(F) drugs and supplies;

(G) prosthetic, orthotic, or other assistive devices, including hearing aids;

(H) eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with state licensure laws;

(I) podiatry;

(J) physical therapy;

(K) occupational therapy;

(L) speech or hearing therapy;

(M) mental health services;

(N) treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(O) special services for the treatment of consumers with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(P) other medical or medically-related rehabilitation services.

(22) Physical or mental impairment--An injury, disease, or other condition that materially limits, or if not treated is expected to materially limit, mental or physical functioning.

(23) Post-employment services--One or more of the goods and services identified in §106.551(f)(7) [§163.25] of this title (relating to Goods and Services) that are provided subsequent to the achievement of an employment outcome and that are necessary to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests.

(24) Rehabilitation engineering--The systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

(25) Rehabilitation technology--The systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(26) Representative--Any individual chosen by an applicant or consumer, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the applicant or consumer, in which case the court-appointed representative is the representative.

(27) Self-employment--An employment outcome in which the individual works for profit or fee in his or her own business, farm, shop, or office, including sharecroppers. Not included within the definition is the employment outcome of licensed manager within Business Enterprises of Texas administered by the Division [Commission], supplemental income businesses, hobbies that periodically produce income, enterprises in which income is based solely or primarily on recruiting sales people to continue building the enterprise (commonly known as "pyramid" schemes), and enterprises prohibited by law or that sell products prohibited by law.

(28) Substantial impediment to employment--A physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) that hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

(29) Supported employment--Competitive work in an integrated setting with ongoing support services for individuals with the most significant disabilities for whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and who, because of the nature and severity of their disabilities, need intensive supported employment services and extended services after transition in order to perform this work, or transitional employment for individuals with the most significant disabilities due to mental illness.

(30) Supported employment services--Ongoing support services and other appropriate services needed to support and maintain

an individual with a most significant disability in supported employment.

(31) Transition services--A coordinated set of activities for a student, designed within an outcome-oriented process that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

(32) Transitional employment--As used in the definition of "supported employment," a series of temporary job placements in competitive work in integrated work settings with ongoing support services for persons with the most severe disabilities due to mental illness.

(33) Transportation--Travel and related expenses that are necessary to enable a person to participate in a vocational rehabilitation service.

(34) Visual impairment--A visual acuity, with best correction, of 20/70 or less in the better eye, or a visual field of 30 degrees or less in the better eye, or a combination of both.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



DIVISION 2. BASIC PROGRAM REQUIREMENTS

40 TAC §§106.523, 106.525, 106.527, 106.529, 106.531, 106.533, 106.535

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.523. Eligibility.

(a) An applicant's eligibility for vocational rehabilitation services shall be based on the following requirements:

(1) The applicant must have a visual impairment.

(2) The applicant's visual impairment must constitute or result in a substantial impediment to employment for the applicant.

(3) Subject to §106.525 [§163.12] of this title (relating to Presumption of Benefit), the applicant must be capable of benefiting in terms of an employment outcome from the provision of vocational rehabilitation services.

(4) The applicant must require vocational rehabilitation services to secure, retain, or regain employment.

(b) No duration of residence requirement is imposed that excludes from services any applicant who is present in the State.

(c) No applicant or group of applicants shall be excluded or found ineligible solely on the basis of the type of disability.

(d) The eligibility requirements shall be applied without regard to the age, gender, race, color, creed, or national origin of the applicant.

(e) The eligibility requirements shall be applied without regard to the particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.

§106.525. Presumption of Benefit.

(a) An applicant shall be presumed capable of benefiting in terms of an employment outcome unless the Division [eommission] demonstrates, based on clear and convincing evidence, that the applicant is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services. With respect to situations in which the issue concerns the severity of the applicant's disability and potential for employment outcome, the Division [eommission] shall explore the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences.

(b) "Clear and convincing evidence" means a high degree of certainty. Clear and convincing evidence might include, but is not limited to, a description of assessments, including situational assessments and supported employment assessments from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability.

(c) Upon receiving appropriate evidence that establishes the applicant's eligibility for benefits under title II or title XVI of the Social Security Act due to blindness and the person has indicated a willingness to work, the Division [eommission] presumes that the applicant meets the basic eligibility requirements in subsection (a) of §106.523 [§163.14] of this title (relating to Eligibility).

§106.527. Eligibility Determination Time Frame.

(a) Eligibility or ineligibility shall be determined no longer than 60 days after the person, or the person's representative, as appropriate, has signed and submitted an application for vocational rehabilitation services in accordance with provisions of §106.521 [§163.10] of this title (relating to Application).

(b) Exceptions to exceeding the 60-day time frame for determining eligibility or ineligibility may occur only when:

(1) the Division [eommission] notifies the applicant that unforeseen circumstances beyond the control of the Division [eommission] preclude the Division [eommission] from completing the determination in 60 days; and

(2) the applicant, or the applicant's representative, as appropriate, agrees to a specific extension of time; or

(3) the Division [eommission] is exploring an individual's abilities, capabilities, and capacity to perform in work situations.

(c) Eligibility shall be determined prior to applying Division 4 of this subchapter [Subchapter D of this chapter] (relating to Order of Selection for [Payment of] Services) and Division 5 of this subchapter [Subchapter E of this chapter] (relating to Consumer Participation in Cost [the Payment] of Services).

§106.529. Data for Eligibility Determination.

(a) The Division [eommission] bases its determination of eligibility on existing data, including information provided by the applicant or the applicant's family, education records, information used by

the Social Security Administration, and, to the extent appropriate and available, determinations made by officials of other agencies.

(b) To the extent existing data do not describe the current functioning of the person or are unavailable, insufficient, or inappropriate to make an eligibility determination, the Division [eommission] uses an assessment of additional data based on the provision of those vocational rehabilitation services, including assistive technology devices and services and work site assessments, that are necessary to determine whether a person is eligible.

§106.531. Ineligibility Determination.

(a) The Division [eommission] shall make a determination of ineligibility only after providing an opportunity for full consultation with the individual, or as appropriate, with the individual's representative.

(b) The Division [eommission] shall inform the individual in writing, supplemented by special modes of communication consistent with the informed choice of the individual, if necessary, of the ineligibility determination, including the reasons for the determination, the requirements under this chapter, and the means by which the applicant may express and seek remedy for any dissatisfaction, including the procedures for review of a determination by the counselor.

(c) The Division [eommission] shall provide the individual with a description of services available from the client assistance program established under 34 CFR Part 370 and information on how to contact that program.

(d) The Division [eommission] shall review any ineligibility determination based on a finding that the individual is incapable of achieving an employment outcome within 12 months, and annually thereafter if requested by the individual or the individual's representative, unless the individual has refused the review, the individual is no longer present in Texas, the individual's whereabouts is unknown, or the individual's medical condition is rapidly progressive or terminal.

§106.533. Case Closure.

(a) The Division [eommission] shall close a case when the person's rehabilitation plan has been completed and the person has been determined to have achieved and maintained continuous employment commensurate with the established employment goal for a minimum of 90 days, or sooner if:

(1) The Division [eommission] is unable to locate or contact the person.

(2) The person's disability is so severely limiting that there is little chance the person can be vocationally rehabilitated or the person's medical condition is expected to progress to such a severely limiting degree in a fairly short period of time that rehabilitation services will be of little or no help.

(3) The person has refused services or further services.

(4) The person has died.

(5) The person has been institutionalized.

(6) The person has been determined to have no disabling condition.

(7) The person has refused to cooperate with the Division [eommission].

(8) Transportation is not feasible or available.

(9) The person has been determined to have no impediment to employment.

(10) The person's case has been transferred to another agency.

(b) Case closure is made with the full knowledge of the person when the person is available.

§106.535. Individualized Plan for Employment (IPE).

(a) All IPE's shall be written on the form prescribed by the Division [~~Commission~~] for this purpose.

(b) The Division [~~Commission~~] shall advise each consumer or, as appropriate, the consumer's representative, of the consumer's options and all Division [~~Commission~~] procedures and requirements affecting the development and review of an IPE, including the availability of special modes of communication.

(c) In developing an IPE for a student with a disability who is receiving special education services, the Division [~~Commission~~] shall consider the student's individualized education program.

(d) The IPE shall be reviewed with the consumer, or as appropriate, the consumer's representative, as often as necessary, but at least once each year, to assess the consumer's progress in meeting the objectives identified in the IPE.

(e) All substantive revisions necessary to reflect changes in the consumer's employment outcome, specific vocational rehabilitation services, service providers, and the methods used to procure services shall be incorporated into the consumer's IPE.

(f) The counselor shall provide the consumer, or, as appropriate, the consumer's representative, with a copy of the IPE, and its amendments, in the mode of communication specified by the consumer or representative.

(g) The data used for preparing the IPE shall be the information necessary to satisfy federal requirements and to adequately document a consumer's plan of services. Regardless of the approach selected by an eligible individual to develop an IPE, an individualized plan for employment shall, at a minimum, contain the following mandatory components:

(1) a description of the consumer's specific employment outcome;

(2) a description of the specific vocational rehabilitation services that are needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices and assistive technology services, and personal assistance services, including training in the management of such services; and timelines for the achievement of the employment outcome and for the initiation of the services;

(3) a description of the entity chosen by the consumer or, as appropriate, the individual's representative, that will provide the vocational rehabilitation services, and the methods used to procure such services;

(4) a description of criteria to evaluate progress toward achievement of the employment outcome;

(5) the terms and conditions of the IPE, including, as appropriate, information describing:

(A) the responsibilities of the Division [~~Commission~~];

(B) the responsibilities of the consumer, including:

(i) the responsibilities the consumer will assume in relation to the employment outcome of the individual;

(ii) if applicable, the participation of the consumer in paying for the costs of the plan; and

(iii) the responsibility of the consumer with regard to applying for and securing comparable benefits; and

(iv) the responsibilities of other entities as the result of arrangements made pursuant to comparable services or benefits;

(6) for a consumer with the most significant disabilities for whom an employment outcome in a supported employment setting has been determined to be appropriate, information identifying:

(A) the extended services needed by the eligible individual; and

(B) the source of extended services or, to the extent that the source of the extended services cannot be identified at the time of the development of the individualized plan for employment, a description of the basis for concluding that there is a reasonable expectation that such source will become available; and

(7) as determined to be necessary, a statement of projected need for post-employment services.

(h) Prior to suspending, reducing, or terminating any planned service in the IPE, the agency shall send written notification of intent to the consumer's last known address.

(i) The agency shall suspend, reduce or terminate a consumer's planned services no sooner than 10 working days after written notification has been mailed to the consumer.

(j) The Division [~~Commission~~] shall not institute a suspension, reduction, or termination of services being provided under an IPE in instances in which the consumer has filed a request for a formal hearing or informal review, pending final resolution unless the individual or, in an appropriate case, the individual's representative so requests or the agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel

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DIVISION 3. VOCATIONAL REHABILITATION SERVICES

40 TAC §§106.551, 106.553, 106.557, 106.559, 106.561, 106.564, 106.566, 106.574, 106.578, 106.580, 106.582

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.551. Goods and Services.

(a) The Division ~~[commission]~~, as appropriate to the vocational rehabilitation needs of each eligible person, provides goods and services necessary to render a consumer employable, subject to certain limitations prescribed in this subchapter and application of Division 4 of this subchapter ~~[Subchapter D of this chapter]~~ (relating to Order of Selection for ~~[Payment of]~~ Services), and Division 5 of this subchapter ~~[Subchapter E of this chapter]~~ (relating to Consumer Participation in ~~[the]~~ Cost of Services).

(b) Services are provided only when planned in advance and contained in the consumer's IPE.

(c) Subject to the limitation prescribed in subsection (b) of this section, the following vocational rehabilitation services are available on an as-needed basis:

- (1) assessment to determine eligibility;
- (2) assessment to determine vocational rehabilitation needs;
- (3) vocational counseling and guidance;
- (4) physical and mental restoration services;
- (5) vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds received under the provisions of the Act unless maximum efforts have been made by the Division ~~[commission]~~ and the individual to secure grant assistance in whole or in part from other sources to pay for that training;
- (6) maintenance as defined in §106.511 ~~§1463.5~~ of this title (relating to Appeals of Determinations);
- (7) transportation as defined in §106.511 ~~§1463.5~~ of this title;
- (8) vocational rehabilitation services to family members of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome;
- (9) interpreter services and note-taking services for persons who are deaf and tactile interpreting for persons who are deaf-blind;
- (10) reader services, rehabilitation teaching services, and orientation and mobility;
- (11) recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate public services employment;
- (12) job search, placement assistance, and job retention services;
- (13) personal assistance services as defined in §106.511 ~~§1463.5~~ of this title;
- (14) post-employment services as defined in §106.511 ~~§1463.5~~ of this title;
- (15) occupational licenses, tools, equipment, and initial stocks and supplies;
- (16) transition services as defined in §106.511 ~~§1463.5~~ of this title;
- (17) referral services;

(18) supported employment services as defined in §106.511 ~~§1463.5~~ of this title;

(19) rehabilitation technology services as defined in §106.511 ~~§1463.5~~ of this title; and

(20) technical assistance and other consultation services.

(d) If comparable services or benefits exist under any other program and are available to the consumer at the time needed to achieve the rehabilitation objectives in the individual's IPE, the Division ~~[commission]~~ shall use those comparable services or benefits to meet, in whole or in part, the cost of vocational rehabilitation services.

(e) If comparable services or benefits exist under any other program, but are not available to the consumer at the time needed to satisfy the rehabilitation objectives in the individual's IPE, the Division ~~[commission]~~ shall provide vocational rehabilitation services until those comparable services and benefits become available.

(f) The following services are exempt from a determination of the availability of comparable services and benefits:

- (1) Assessment for determining eligibility and priority for services.
- (2) Assessment for determining vocational rehabilitation needs.
- (3) Vocational rehabilitation counseling, guidance, and referral services.
- (4) Vocational and other training services, such as personal and vocational adjustment training, books (including alternative format books accessible by computer and taped books), tools, and other training materials in accordance with subsection ~~(c)~~~~(d)~~(5) of this section.
- (5) Placement services.
- (6) Rehabilitation technology.
- (7) Post-employment services consisting of the services listed under subsection (b)(1) - (6) of this section.

(g) The requirements of subsection (e) of this section also do not apply if:

- (1) the determination of the availability of comparable services and benefits under any other program would delay the provision of vocational rehabilitation services to any consumer who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional; or
- (2) an immediate job placement would be lost due to a delay in the provision of comparable services and benefits.

§106.553. Assessment for Determining Eligibility, Vocational Rehabilitation Needs, and Assessment for Rehabilitation Technology.

(a) The Division ~~[commission]~~ conducts assessments for determining eligibility, vocational rehabilitation needs, and, if necessary, rehabilitation technology for each consumer in order to develop an IPE that is designed to achieve the consumer's vocational goal. The vocational goal shall be an employment outcome that is consistent with the person's unique strengths, resources, priorities, concerns, abilities, capabilities, and career interests.

(b) If additional data are necessary to prepare an IPE, the Division ~~[commission]~~ conducts a comprehensive assessment of the consumer's unique strengths, resources, priorities, interests, and needs, including the need for supported employment services, in the most integrated setting possible, consistent with the informed choice of the consumer.

(c) A comprehensive assessment is limited to information that is necessary to identify the rehabilitation needs and to develop the rehabilitation program for the consumer, but may, to the extent needed, include the following:

(1) a comprehensive analysis of pertinent medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, and related functional limitations, that affect the employment and rehabilitation needs of the consumer;

(2) an analysis of the consumer's personality, career interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities;

(3) an appraisal of the consumer's patterns of work behavior and services needed to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance; and

(4) an assessment, through provision of rehabilitation technology services, of the consumer's capacities to perform in a work environment, including in an integrated setting, to the maximum extent feasible and consistent with the consumer's informed choice.

(d) In preparing the comprehensive assessment, the Division [commission] shall use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information, information provided by the consumer, and information provided by the consumer's family and education agencies.

§106.557. Vocational and Other Training Services.

(a) All equipment purchased by the Division [commission] for the purpose of training shall remain the property of the Division [commission].

(b) Academic training in institutions of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) shall be subject to the following:

(1) Academic training in vocational schools and technical institutes shall be provided only in schools that are certified by the State of Texas.

(2) No academic training shall be paid from vocational rehabilitation funds unless maximum efforts have been made by the agency and the consumer to secure grant assistance in whole or in part from other sources to pay for such training.

(3) The consumer must contact the college or university and apply for any available financial aid.

(4) The PELL grant, like any other comparable services and benefits, shall be applied to the educational process prior to the expenditure of Division [commission] funds for services under this section. Services shall not be denied pending receipt of a PELL grant, but shall be contingent upon the consumer's making application if eligible.

(5) Academic training shall be provided through public tax-supported colleges and universities in Texas unless:

(A) a specific curriculum related to the student's academic major is not available at a Texas public institution, or

(B) academic training elsewhere is determined to be more economical, or

(C) academic training elsewhere provides specialized services needed by the consumer, such as services provided at Gallaudet University for students who are deaf.

(6) If the consumer chooses to obtain academic training out of Texas and the provisions in paragraph (5) of this subsection [section] do not apply, academic support shall be limited to that which the person would receive if they attended a state-supported college or university in Texas.

(7) Consumers who are blind and who do not meet the residency requirements of a particular institution and are not eligible for tuition exemption under the Texas Education Code, §54.205, may receive tuition assistance from the Division [commission] regardless of economic need of the consumer; however, such payments shall not exceed the tuition paid for a student who does meet the residency requirements.

(8) Tuition and fee exemption is an exemption from payment of tuition and/or required fees normally charged by a state-supported college or university. Required fees include student services, building use, health center, lab fees, and property deposits not reimbursable to the student. Required fees do not include optional fees.

(9) Any equipment purchased for a consumer during academic training must be needed by the consumer to help maintain academic success so the vocational goal can be met.

(10) Academic training shall not include continuing education required for maintaining certification in a field in which an individual is already gainfully employed.

(11) If a consumer is blind and is attending a non-tax-supported college or university, tuition and fees may be paid by the Division [commission] regardless of economic need of the consumer. However, the Division [commission] shall not pay tuition and fees in excess of the college or university's published rate for training. If the college or university does not have a published rate, tuition and fees shall be paid at rates in accordance with a written agreement between the college or university and the Division [commission].

(12) Once admitted to academic training:

(A) A consumer must maintain and complete a full-time course load as defined by the college or university. This requirement may be waived if:

(i) the person is a graduating senior;

(ii) the person is an incoming freshman (first two semesters or quarters);

(iii) the person is a returning adult (first academic year only);

(iv) the person is in summer school; or

(v) other extenuating circumstances prevent the consumer from participating in a full-time course load.

(B) The consumer shall meet with the counselor at least once each semester, shall submit add or drop slips as changes occur, and shall provide grade slips or transcripts to the counselor at the end of each semester.

§106.559. Maintenance.

Maintenance needed for the consumer or applicant receiving extended evaluation to receive all services except diagnostic services is subject to application of Division 5 [Subchapter E] of this subchapter [chapter] (relating to Consumer Participation in Cost [Payment] of Services).

§106.561. Transportation.

(a) Transportation may include travel and related expenses for an attendant or aide if the services of that person are necessary to enable the consumer to travel.

(b) Transportation available to the consumer without cost to the Division [eommission] shall be used first.

(c) Transportation provided by a consumer shall be reimbursed at a rate no more than the rate authorized for state employees traveling on official business.

(d) To seek reimbursement for transportation, the consumer must submit a statement to the Division [eommission] noting, at a minimum, the starting point, destination, and the number of miles traveled, and any other information as may be required by the Division [eommission] to satisfy state requirements.

§106.564. Interpreter Services and Note-taking Services for Individuals Who Are Deaf and Tactile Interpreting for Individuals Who Are Deaf-Blind.

If available, the Division [eommission] shall use interpreters certified by the DARS, Division for Rehabilitation Services, Office for Deaf and Hard of Hearing Services [Texas Commission for the Deaf and Hard of Hearing] or by the Registry of Interpreters in the delivery of services to persons who are deaf or deaf-blind.

§106.566. Reader Services, Rehabilitation Teaching Services, and Orientation and Mobility Services.

(a) Reader services shall be available only to consumers who are blind and who are receiving vocational or academic training.

(b) The consumer shall use all other available reading sources to the maximum degree possible prior to seeking reimbursement from the Division [eommission] for reader services.

(c) The maximum amount allowed per month for reader services shall be calculated according to the number of semester hours the student is taking, whether during a fall, spring or summer semester, and whether the student is an undergraduate or graduate student. The rate of reimbursement is available from any Division [eommission] office during work hours.

(d) The Division [eommission] shall not pay for reader services rendered by a member of the consumer's family.

(e) To receive reimbursement for reader services, the consumer must submit the information required by the Division [eommission] on a prescribed form.

(f) When practical, the Division [eommission] provides orientation and mobility training at a rehabilitation center such as Criss Cole Rehabilitation Center, followed in priority by the use of certified orientation and mobility specialists on staff at local lighthouses for the blind, independent certified mobility specialists or persons who have degrees specializing in orientation and mobility, and Division [eommission] rehabilitation teachers.

§106.574. Personal Assistance Services.

(a) Personal attendant services are a part of personal assistance services, as that term is defined in §106.509 [§163.4] of this title relating to (Definitions), which assist an individual with a severe disability or most severe disability with activities such as transferring, dressing and undressing, eating, toileting, weight shifting, mobility, writing, and reading, while the individual is receiving vocational rehabilitation services.

(b) A consumer who is an individual with a significant disability or a most significant disability may receive personal attendant services if:

(1) the consumer is actively receiving another vocational rehabilitation service covered in §106.551 [§163.25] of this title (pertaining to Goods and Services), and

(2) personal attendant services are necessary for the consumer to achieve an employment outcome.

(c) Consumers may either hire their own personal attendants or allow the Division [eommission] to provide personal attendants through a source licensed in the State of Texas to provide personal attendant services.

(d) Consumers who hire their own personal attendant shall be considered the employer under applicable employer tax laws, and shall be responsible for:

(1) hiring and firing the attendant;

(2) training the attendant in the delivery of services;

(3) supervising the attendant in the delivery of services or arranging for a friend or relative to provide direct supervision of the attendant; and

(4) terminating the services of the attendant.

(e) Consumers shall be responsible for informing their counselors of any dissatisfaction with services rendered by personal attendants.

(f) To receive reimbursement for personal attendant services, the consumer or service provider must submit a monthly written statement to the Division [eommission] that contains the services rendered by the attendant during the consumer's vocational rehabilitation activity, the number hours worked by the attendant, and any additional information specified by the consumer's counselor that is needed to process reimbursement payments in a timely manner.

(g) Personal attendant services may be continued for three months after the consumer enters employment. This time period may be extended for one additional month upon determination of need.

(h) Personal attendant services are subject to Division 5 [Subchapter E] of this subchapter [chapter] (relating to Consumer Participation in the Cost of Services).

§106.578. Supported Employment Services.

(a) A consumer may receive supported employment services if:

(1) the consumer is an individual with a most severe disability, and

(2) the comprehensive assessment of rehabilitation needs of the consumer identifies supported employment as the appropriate employment outcome.

(b) Supported employment services are limited to 18 months unless the consumer and the Division [eommission] jointly agree to extend the time in order to achieve the rehabilitation objectives identified in the consumer's IPE.

(c) The Division [eommission] coordinates supported employment services with the individualized plans established under other federal and state programs.

(d) Ongoing services provided to the consumer during supported employment services shall include an assessment of employment stability and provision of specific services, or the coordination of services at or away from the worksite that are needed to maintain stability.

(e) Ongoing services provided to the consumer during supported employment services shall consist of the following:

(1) any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in this part;

(2) the provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;

(3) job development and placement;

(4) social skills training;

(5) regular observation or supervision of the individual;

(6) follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(7) facilitation of natural supports at the worksite;

(8) any other service or similar service identified in the scope of vocational rehabilitation services described in §106.551 [§163.25] of this title (relating to Goods and Services).

§106.580. Rehabilitation Technology Services.

(a) Assistive technology devices are purchased only after evaluation of individual need and cost. Simple and less expensive alternatives shall be considered first.

(b) A consumer shall return to the Division [Commission] any assistive technology device no longer needed for training, employment, or pursuit of employment.

§106.582. Establishing a Small Business as an Employment Outcome.

(a) The Division [Commission] recognizes that self-employment through the establishment of a small business may be a viable employment outcome for certain consumers. The purpose of the rules in this section is to implement federal regulations (34 CFR Part 361, §361.48) that authorize the provision of technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources to eligible individuals who are establishing a small business operation as an employment outcome.

(b) When a consumer expresses an interest in establishing a small business as an employment outcome, the Division [Commission] shall make an assessment of the consumer's potential and aptitude for self-employment before any efforts are made to attain that goal. In doing so, the Division [Commission] shall utilize those resources available for the purposes of assessing the potential and aptitude of the consumer for successful self-employment. Such measures may include, but are not necessarily limited to, the use of standardized tests and surveys intended to measure vocational aptitudes as well as a consideration of the consumer's personal characteristics such as prior education, work experience, achievements, physical and psychological health, and independence.

(c) After a preliminary assessment as described in subsection (b) of this section, if the consumer and Division [Commission] agree that establishing a small business as an employment outcome should be further considered, the consumer shall submit to the Division [Commission] a written proposal. The proposal shall provide in reasonable detail such information as will inform the Division [Commission] of the financial and other support which will be requested of the Division [Commission] for the purposes of establishing a small business. The information required in the proposal shall include, but is not necessarily limited, to the following:

(1) The type of business proposed;

(2) The location from which the business will be operated;

(3) An itemized list of all equipment, appliances, supplies, initial start-up capital, and other materials requested from the Division [Commission], including the source of each item and its cost; and

(4) An itemized list of all equipment, appliances, supplies, start-up capital and other materials to be provided by the consumer or other sources, including the source of each item and its cost.

(5) An itemized list of all certificates and permits required by law in order to operate the business.

(d) With respect to any proposed small business, the Division [Commission] shall require, in addition to any other relevant matters, verification that the consumer has sought funding for the start up of the small business from other available sources, including but not limited to the Small Business Administration, the Texas Division of Economic Development, community development funds that may be available for the purpose of establishing small business enterprises in the locality in which the consumer resides, funds from other sources such as programs for certain populations (e.g., programs that assist women, minorities or low-income individuals to start or expand a business), the Social Security Administration, or any other similar governmental or private funding source.

(e) In order to make the consumer a stakeholder with a vested interest in the success of the small business and to encourage the necessary diligence, perseverance, and commitment to enhance the possibility of success, the consumer shall be required to contribute to the start-up costs of the business in such amounts as may be required by the Division [Commission]. In determining the amounts required to be provided by the consumer, the Division [Commission] shall consider funds available to the consumer from other sources as well as funds available to the Division [Commission] under its then current budget limitations. The contribution required of the consumer may be satisfied in whole or in part by in-kind contributions (personal assets provided by the consumer, which may include, but are not necessarily limited, to such items as tools, furniture, supplies, business space) and funds acquired or to be acquired from other sources as described in subsection (d) of this section.

(f) In addition to the written proposal required by subsection (c) of this section and the financial details required by subsection (d) of this section, the consumer shall prepare and submit to the Division [Commission] a business plan. The business plan shall describe the plans of the consumer to market the business operations, the demographics of the area intended to be served as such relate to the particular business being considered, the potential for growth and expansion, and the potential of employing other persons in the business, as well as any other information relevant to the operation of the small business. A copy of a suggested format for writing a business plan shall be provided to the consumer by the Division [Commission]. The Division [Commission] shall provide technical assistance in preparing a business plan appropriate to the individual and the amount of funds requested to establish the small business. The consumer may be required to consult with entities providing services to individuals seeking to establish and operate small businesses, such as the Texas Workforce Commission, Small Business Administration, Small Business Development Centers, Senior Corps of Retired Executives (SCORE), or other similar organizations that offer guidance in the preparation of business plans or self-employment. Any requirement shall be discussed in advance with the consumer and included on the consumer's individualized plan for employment.

(g) Identifying a business location and signing any necessary lease agreements are the sole responsibilities of the consumer.

(h) Costs of renovations or remodeling shall be limited to those costs essential to start the business.

(i) The ongoing costs after the commencement of the business are the full responsibility of the consumer, and the Division [~~Commission~~] shall have no responsibility for further financial or other assistance to the consumer subsequent to the commencement of the business.

(j) The Division's [~~Commission's~~] self-employment services do not include the purchase of any of the following items; however, the cost of these items, if necessary to the business, may be included in the business plan in arriving at the total cost of establishing the business and may be considered as a part of the consumer's contribution:

- (1) utility or other deposits;
- (2) insurance;
- (3) sales tax security deposit;
- (4) bonding fees;
- (5) the purchase or rental of real estate;
- (6) operating capital (cash), except any initial amount agreed to be furnished by the Division [~~Commission~~] as initial cash start-up costs;
- (7) vehicles, boats, aircraft, or trailers requiring title of ownership; and
- (8) firearms.

(k) The consumer is responsible for obtaining and completing application for all certificates and permits required by law in order to operate the business. Assistance with these applications is available from the Division [~~Commission~~].

(l) After reviewing the proposal and business plan pursuant to the requirements of this section, the Division [~~Commission~~] shall notify the consumer in a format accessible to the consumer if the plan has been approved as an employment outcome and whether the Division [~~Commission~~] shall provide funding and, if so, the extent of such funding as well as any other assistance to be provided to the consumer in establishing the small business. Appeals of decisions not to approve a plan or to fund a plan may be filed in accordance with procedures contained in §101.811 [~~§161.1~~], et seq., of this title, pertaining to appeals and hearing procedures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. ORDER OF SELECTION FOR SERVICES

40 TAC §106.605

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Com-

missioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.605. *Order of Selection.*

(a) If it becomes necessary, due to limited funds, for the Division [~~Commission~~] to operate under an order of selection, vocational rehabilitation services shall be provided according to the following priorities:

- (1) Priority 1--Persons who meet the definition of individual with a most significant disability.
- (2) Priority 2--Persons who meet the definition of individual with a significant disability.
- (3) Priority 3--Persons who meet the definition of individual with a disability.

(b) To inquire if the agency is operating under the order of selection, a person may contact any Division [~~Commission~~] office, including the central office at 4800 North Lamar, Austin, Texas, toll-free 800-252-5204.

(c) In the event the order of selection is implemented, the Division [~~Commission~~] shall:

- (1) implement the order of selection on a statewide basis;
- (2) notify all eligible individuals of the priority categories in the order of selection, their assignment to a particular category, and their right to appeal their category assignment;
- (3) continue to provide all needed services to any consumer who has begun to receive services under an IPE prior to the effective date of the order of selection, irrespective of the severity of the individual's disability; and

(4) ensure that its funding arrangements for providing services under the State plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the Division [~~Commission~~] shall renegotiate these funding arrangements so that they are consistent with the order of selection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. CONSUMER PARTICIPATION IN COST OF SERVICES

40 TAC §§106.621, 106.623, 106.625, 106.627, 106.631, 106.633

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.621. Purpose of Division 5 [Subchapter].

The purpose of Division 5 [this subchapter] is to establish consumer participation in service costs to encourage the consumer's commitment to a vocational rehabilitation goal, to create a cooperative relationship between the consumer and the Division [eommission], and to maximize the Division's [eommission's] limited funds.

§106.623. Scope of Division 5 [Subchapter].

(a) In addition to the exception noted in subsection (b) of this section, all vocational rehabilitation services are subject to this Division 5 [subchapter] except the following:

- (1) assessment for determining eligibility and priority for services, except for vocational rehabilitation services other than those of a diagnostic nature provided under an extended evaluation;
- (2) assessment for determining vocational rehabilitation needs;
- (3) vocational rehabilitation counseling, guidance, and referral services by Division [eommission] staff;
- (4) employment assistance services by Division [eommission] staff;
- (5) training;
- (6) vocational rehabilitation teacher services (including consumable supplies);
- (7) any auxiliary aid or service (e.g., interpreter services, reader services) that an individual with a disability needs in order to participate in the VR program; or
- (8) orientation and mobility services;
- (9) tuition and fees;
- (10) assistive technology devices and other necessary equipment to improve the functional capabilities of an individual with a disability;
- (11) personal assistance services; and
- (12) services paid for or reimbursed by a source other than the Division [eommission].

(b) Individuals receiving Social Security benefits under Titles II or XVI of the Social Security Act are exempt from this subsection.

(c) A consumer's required participation in the cost of establishing a small business when the consumer's vocational goal is self-employment is contained in §106.582 [§163.40] of this title, pertaining to Establishing a Small Business as an Employment Outcome.

§106.625. Definitions.

As used in Division 5 [this subchapter], the following words or terms have the following meanings unless the context clearly indicates otherwise.

(1) **Dependent**--A person carried as a dependent by the parents, foster parents, legal guardian, or conservator for income tax purposes during the current tax year, including consumers who are minors

or dependents, consumers under 18 years of age and married but not living with their spouse and whose major source of income is from parents or legal guardians, and consumers adjudged legally incompetent.

(2) **Economic resources**--Net monthly income and liquid assets.

(3) **Family**--The consumer, including consumers who are minors or dependents; the consumer's parents or legal guardians; and all persons residing in the household for whom the consumer or parents or legal guardians have legal and/or financial responsibility.

(4) **Liquid assets**--Cash, bank accounts, and stocks and bonds, including certificates of deposit unless it is in a retirement account recognized by the Internal Revenue Service, such as an IRA or a Keogh.

(5) **Minor**--A person who is under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes. In the context of child support "child" includes a person over 18 years of age who is fully enrolled in an accredited secondary school in a program leading toward a high school diploma. "Adult" means any other person.

(6) **Monthly income**--Income derived from:

(A) wages and salaries, after deductions for:

- (i) income tax;
- (ii) social security tax;
- (iii) one qualified retirement program;
- (iv) health insurance premiums; and
- (v) trade or professional dues and assessments;

(B) contributions received on a regular basis from family, persons, or organizations;

(C) net rentals from property;

(D) public assistance payments;

(E) assistance from private welfare agencies;

(F) income from stock dividends and bond interest;

(G) income from child support payments;

(H) income from self-employment, which is defined as gross receipts, minus allowable Internal Revenue Service expenses, from one's own business which results in income. Gross receipts include the value of all goods sold and services rendered. Expenses include the cost of goods purchased, rent, utilities, wages and salaries paid, and business taxes (not personal income taxes or self-employment social security taxes);

(I) any available pension or insurance, including Social Security Disability Income (SSDI); health/hospitalization insurance plans; workers' compensation; veterans' benefits; Old Age and Survivors Insurance (OASI) from the Social Security Administration; labor union insurance and/or health and welfare benefits; and unemployment compensation; and

(J) participation in savings plans.

(7) **Net monthly income**--Monthly income, less allowed adjustments described in §106.631 [§163.65] of this title (relating to Allowed Adjustments To Calculate Net Monthly Income).

§106.627. General Procedures.

(a) The Division [eommission] informs applicants of the rules on consumer participation in the cost of services upon application.

(b) All applicants and consumers, regardless of their economic resources, are asked if they can pay for any part of their rehabilitation program.

(c) Participation in the cost of services is determined after the eligibility requirements contained in §106.523 [§163.14] of this title (relating to Eligibility) and order of selection criteria contained in Division 4 of this subchapter [Subchapter D of this chapter] (relating to Order of Selection for [Payment of] Services) have been applied and approved.

(d) Participation in the cost of services is determined by the economic resources of all persons meeting the definition of family.

(e) The purchase of occupational tools and sophisticated technological equipment cannot always be anticipated before a consumer is employed. If special equipment needs are discovered after the consumer starts to work and without the equipment the consumer's job would be verifiably in jeopardy, consumer participation in the cost of purchase is based on the level of participation immediately preceding employment.

(f) Economic resources are evaluated at least annually or at any time the Division [commission] is purchasing a service and the Division [commission] has reason to believe the family's economic status has changed.

§106.631. Allowed Adjustments to Calculate Net Monthly Income.

It is not the intent of the Division [commission] to impose a financial hardship upon a family; therefore, monthly income is adjusted to net monthly income by subtracting the following:

- (1) rent or home mortgage payments;
- (2) disability-related expenses paid by the consumer, including medical payments as a result of disability and/or illness of family member;
- (3) prescribed family medications and diets; and
- (4) family obligations imposed by court order.

§106.633. Refusal to Disclose Economic Resources.

Applicants and persons included in the definition of family have the right to not disclose their economic resources. When this information is not disclosed, economic resources are determined by the Division [commission] to be in excess of the allowable amounts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 6. MAXIMUM AFFORDABLE PAYMENT

40 TAC §106.651

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with

the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.651. Scope of Division 6 [Subchapter].

(a) The maximum affordable payment is the maximum amount the Division [commission] pays for a medical or medically related service and interpreter services. However, the payment:

- (1) shall not be so low as to effectively deny a person a necessary service; and
- (2) shall permit exceptions so that individual needs can be addressed.

(b) The current schedule of maximum affordable payments is maintained for public view and inspection according to §106.507 [§163.3] of this title (relating to Public Access to Forms and Documents).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 7. SERVICE PROVIDERS

40 TAC §106.661

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.661. Supported Employment Services Agreement.

(a) Supported employment services are purchased by written agreement with organizations or employers that commit to provide or arrange for extended support services for the consumer once Division [commission] responsibility for the case ceases.

(b) The Division [commission] does not reimburse the costs of extended support services.

(c) In the provision of supported employment services on a fee-for-service-basis, a service provider is required to sign an agreement that specifies, at a minimum, the following.

- (1) Services shall be provided in accordance with supported employment guidelines contained in the agreement.
- (2) A statement of services and a consumer progress report shall be rendered to the Division [commission] on a monthly basis in a form acceptable to the Division [commission].
- (3) Authorized travel shall be in accordance with State of Texas travel regulations as they apply to employees of the state.

(4) The service provider shall comply with all applicable state and federal laws, including Chapter 81 of the Health and Safety Code regarding confidentiality, testing, medical records and information regarding HIV, Chapter 85 of the Health and Safety Code regarding model work place guideline requirements, and the Americans with Disabilities Act.

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DIVISION 8. CONFIDENTIALITY OF RECORDS

40 TAC §§106.671, 106.673, 106.675

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.671. Confidentiality of Personal Information.

All applicant and consumer personal information furnished to and gathered by the Division [~~Commission~~] in the administration of this chapter, including names, addresses, records of agency evaluations, reports of medical examinations and treatments, financial information, and photographs, shall be held confidential in accordance with these rules, 34 Code of Federal Regulations §361.38 (concerning the protection, use, and release of personal information), Texas Human Resources Code, Title 5, §91.059 (concerning the misuse of information, and state laws concerning the abuse or neglect of children, elderly persons, and disabled persons).

§106.673. Conditions for the Release of Personal Information.

(a) Personal information shall not be disclosed directly or indirectly outside the Division [~~Commission~~] unless the applicant or consumer's consent has been obtained in writing, or unless the disclosure or release of personal information:

- (1) is required by federal law;
- (2) is required in response to investigations in connection with law enforcement, fraud or abuse, and in response to judicial order; or
- (3) is required in order to protect the individual or others when the individual poses a threat to his or her own safety or the safety of others.

(b) Information containing identifiable personal information shall not be shared with advisory or other bodies that do not have official responsibility for administration of the program.

(c) Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only

for purposes directly connected with the administration of the vocational rehabilitation program; or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if the organization, agency, or individual assures that:

- (1) the information will be used only for the purposes for which it is being provided;
- (2) the information will be released only to persons officially connected with the audit, evaluation, or research;
- (3) the information will not be released to the involved individual;
- (4) the information will be managed in a manner to safeguard confidentiality; and
- (5) the final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

§106.675. Access to Records by Applicants and Consumers.

(a) Subject to the exceptions contained in subsection (b) of this section, upon receiving a signed request from an applicant or consumer, the Division [~~Commission~~] shall, in a timely manner, provide a copy of all requested information maintained by the Division [~~Commission~~] relating to the applicant or consumer to the individual or the individual's representative.

(b) The following are exceptions to subsection (a) of this section:

(1) Medical, psychological, or other information that the Division [~~Commission~~] determines may be harmful to an applicant may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

(2) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. INDEPENDENT LIVING PROGRAM

DIVISION 1. GENERAL INFORMATION

40 TAC §§106.851, §106.855

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision

of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.851. Program Purpose.

The Independent Living Program is a joint state-federal funded program administered by the Division [~~Commission~~] to assess, plan, develop, and provide independent living services to persons eligible under federal and state guidelines.

§106.855. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

- (1) Act--The Rehabilitation Act of 1973, as amended.
- (2) Blind (person who is)--A person whose visual acuity with best correction is 20/200 or less in the better eye, or a person with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees, which means a visual field of no greater than 20 degrees in the better eye.
- (3) Comparable services and benefits--Services and benefits that are provided or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits; available to the consumer; and commensurate in quality and nature to the services that the consumer would otherwise receive from the Division [~~commission~~].
- (4) Consumer--A person who has been determined eligible by the Division [~~commission~~] for independent living services.
- (5) Disability--A physical or mental impairment that substantially limits one or more major life activities.
- (6) Family--The consumer, parent(s), and/or legal guardian(s) and all individuals residing in the household for whom the consumer, parent(s) and/or legal guardian(s) have legal and financial responsibility.
- (7) Independent Living Plan (IL Plan)--A written record that documents all phases of the consumer's rehabilitation process as developed by the independent living worker and the consumer.
- (8) Individual with a significant disability--An individual with a visual impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment, respectively.
- (9) Representative--A parent, legal guardian, or other representative appointed by the court to represent the individual or an advocate or other family member designated in writing by the individual to represent the individual.
- (10) Transportation--Travel and related expenses that are necessary to enable a consumer to benefit from another independent living service and travel and related expenses for an attendant or aide if the services of that attendant or aide are necessary to enable an individual with a significant disability to benefit from that independent living service.
- (11) Visual impairment--A visual acuity, with best correction, of 20/70 or less in the better eye, or a visual field of 30 degrees or less in the better eye, or a combination of both.

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DIVISION 2. BASIC PROGRAM REQUIREMENTS

40 TAC §§106.873, 106.875, 106.877, 106.879, 106.881

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.873. Eligibility.

(a) Independent living services are available to individuals with a significant disability as the term is defined in §106.855 [~~§164.3~~] of this title, relating to definitions.

(b) The Division [~~Commission~~] shall apply eligibility requirements without regard to the individual's age, color, creed, gender, national origin, race, religion, or length of time present in Texas.

§106.875. Data for Eligibility Determination.

The Division [~~commission~~] shall, if possible, base its determination of eligibility on existing data, including information provided by the applicant or the applicant's family, education records, information used by the Social Security Administration and, to the extent appropriate and available, determinations made by officials of other agencies.

§106.877. Ineligibility Determination.

(a) Prior to making a determination of ineligibility, the Division [~~commission~~] shall consult with or provide a clear opportunity for consultation with the applicant or, in appropriate cases, the applicant's representative.

(b) The Division [~~commission~~] shall inform the applicant or the applicant's representative, in appropriate cases, in writing, or by special mode of communication if designated by the applicant, of an ineligibility determination, including the reasons for the determination, the requirements under this chapter, and the means by which the applicant may appeal the decision. The notice shall also include information on how to contact the Client Assistance Program in Texas. If appropriate, the Division [~~Commission~~] shall refer the applicant to other agencies and facilities.

(c) The Division [~~commission~~] shall review an ineligibility determination within 12 months unless the person has refused the review, the person is no longer present in Texas, the person's whereabouts are unknown, or the person's medical condition is rapidly progressive or terminal.

§106.879. Case Closure.

(a) The Division [~~Commission~~] shall close a case when the person's independent living plan has been completed, or sooner if:

- (1) the person does not meet eligibility criteria;

(2) the person is unavailable during an extended period of time to complete an assessment of independent living needs and the Division [~~commission~~] has made repeated efforts to contact and encourage the applicant to participate;

(3) the person has refused services or further services;

(4) the person is no longer present in Texas;

(5) the person's whereabouts are unknown;

(6) the person's medical condition is rapidly progressive or terminal;

(7) the person has refused to cooperate with the Division [~~commission~~]; or

(8) the person's case has been transferred to another agency.

(b) Case closure shall be made with the full knowledge of the person when the person's whereabouts are known.

(c) The Division [~~commission~~] shall inform the consumer or the consumer's representative, in appropriate cases, in writing, or by special mode of communication if designated by the consumer, of the Division's [~~Commission's~~] intent to close the case and the means by which the consumer may appeal the decision.

§106.881. Independent Living (IL) Plan.

(a) Unless the consumer knowingly and voluntarily signs a waiver stating that an IL plan is unnecessary, an IL plan and all subsequent amendments shall be developed jointly by the independent living worker and consumer.

(b) The Division [~~commission~~] shall advise each consumer of Division [~~commission~~] procedures and requirements affecting the development and review of an IL plan, including the availability of special modes of communication.

(c) The IL plan shall be reviewed with the consumer at least once each year to assess the consumer's progress in meeting the objectives identified in the IL plan.

(d) The independent living worker shall incorporate into the IL plan any revisions that are necessary to reflect changes in the consumer's goal, intermediate objectives, or needs.

(e) To receive a copy of the IL plan and its amendments in a medium other than print, the consumer must inform the independent living worker of the preferred medium.

(f) The consumer must inform the Division [~~commission~~] of changes that will affect the provision of services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel

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DIVISION 3. INDEPENDENT LIVING SERVICES

40 TAC §106.901, §106.903

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.901. Goods and Services.

(a) Goods and services provided under this subchapter [~~chapter~~] must be necessary to assist the consumer to achieve a greater level of independence.

(b) Goods and services provided under this subchapter [~~chapter~~] shall be subject to application of §§106.931 - 106.943 [~~§§164.40 - 164.46~~] of this title pertaining to consumer participation in the cost of services.

(c) Goods and services shall be provided only when planned in advance.

(d) The agency shall use, to the maximum extent possible and allowed, comparable services and benefits from other sources for all goods and services to be provided under this subchapter [~~chapter~~].

§106.903. Transportation.

(a) Transportation that is available to the consumer without cost to the Division [~~commission~~] shall be used first.

(b) Transportation provided by the consumer shall be reimbursed at a rate no more than the rate for state employees traveling on state business.

(c) To seek reimbursement for transportation, the consumer must submit a statement to the Division [~~commission~~] noting, at a minimum, the starting point, destination, the number of miles traveled, and any other information as may be required by the Division [~~commission~~] to satisfy state requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. CONSUMER PARTICIPATION IN COST OF SERVICES

40 TAC §§106.931, 106.933, 106.935, 106.937, 106.939, 106.941

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.931. Purpose.

The purpose of this subchapter is to establish consumer participation in service costs to encourage the consumer's commitment to an independent living goal, to create a cooperative relationship between the consumer and the Division [~~commission~~], and to maximize the Division's [~~commission's~~] limited funds.

§106.933. Scope.

All goods and services provided under this chapter are subject to this subchapter except the following:

- (1) diagnostics and evaluation services (includes maintenance and transportation);
- (2) counseling, guidance, and referral services provided by Division [~~commission~~] staff;
- (3) independent living worker services;
- (4) orientation and mobility training;
- (5) low vision evaluations;
- (6) adaptive aids, appliances, and supplies under \$50;
- (7) interpreter services;
- (8) Criss Cole Rehabilitation Center training (includes transportation to and from the center); and
- (9) services paid for or reimbursed by a source other than the Division [~~commission~~].
- (10) training in management of secondary disabilities or related health conditions.

§106.935. Definitions.

As used in this Division 5 [~~subchapter~~], the following words or terms shall have the following meanings unless the context clearly indicates otherwise.

- (1) **Dependent**--A person carried as a dependent by the parents, foster parents, legal guardians, or conservator for income tax purposes during the current tax year, including consumers who are minors or dependents, consumers under 18 years of age and married but not living with their spouse and whose major source of income is from parents or legal guardians, and consumers adjudged legally incompetent.
- (2) **Economic Resources**--Net monthly income.
- (3) **Minor**--A person who is under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes. In the context of child support "child" includes a person over 18 years of age who is fully enrolled in an accredited secondary school in a program leading toward a high school diploma. "Adult" means any other person.
- (4) **Monthly income**--Income derived from:
 - (A) wages and salaries, after deductions for:
 - (i) income tax;
 - (ii) social security tax;
 - (iii) one qualified retirement program;
 - (iv) health insurance premiums; and
 - (v) trade or professional dues and assessments;
 - (B) contributions received on a regular basis from family, persons, or organizations;
 - (C) net rentals from property;
 - (D) scholarships and fellowships;

- (E) public assistance payments;
- (F) assistance from private welfare agencies;
- (G) income from stock dividends and bond interest;
- (H) income from child support payments;

(I) income from self-employment, which is defined as gross receipts, minus allowable Internal Revenue Service expenses, from one's own business which results in income. Gross receipts include the value of all goods sold and services rendered. Expenses include the cost of goods purchased, rent, utilities, wages and salaries paid, and business taxes (not personal income taxes or self-employment social security taxes);

(J) any available pension or insurance, including Social Security Disability Income (SSDI); health/hospitalization insurance plans; workers' compensation; veterans' benefits; Old Age and Survivors Insurance (OASI) from the Social Security Administration; labor union insurance and/or health and welfare benefits; and unemployment compensation; and

(K) participation in savings plans.

(5) **Net monthly income**--Monthly income, less allowed adjustments described in §106.941 [~~§164.45~~] of this title (relating to Allowed Adjustments to Calculate Net Monthly Income).

§106.937. General Procedures.

(a) The Division [~~commission~~] shall inform applicants of the rules on consumer participation in the cost of services upon application.

(b) All applicants and consumers, regardless of their economic resources, may be asked if they can pay for any part of their rehabilitation program.

(c) Participation in the cost of services shall be determined after eligibility requirements contained in §106.873 [~~§164.11~~] of this title (relating to eligibility) and order of selection criteria contained in Subchapter D of this title (relating to order of selection for independent living services) have been applied and approved.

(d) Participation in the cost of services shall be determined by the economic resources of all persons meeting the definition of family who have a legal obligation of support for the consumer.

(e) Economic resources shall be evaluated at least annually or at any time the Division [~~commission~~] is purchasing a service and/or the Division [~~commission~~] has reason to believe the family's economic status has changed.

§106.939. Maximum Allowable Amount.

(a) Economic resources in excess of the amount allowed by the Division [~~commission~~] must be used by the consumer to pay for the cost of independent living services. Maximum allowable amounts are contained in an Economic Resources Table available at any Division [~~commission~~] office.

(b) The maximum allowable amount may fluctuate according to relevant factors, such as established federal and state poverty levels, the funds available to the Division [~~commission~~] for services, and the number of persons meeting the definition of family.

§106.941. Allowed Adjustments to Calculate Net Monthly Income.

It is not the intent of the Division [~~commission~~] to impose a financial hardship upon a family; therefore, monthly income may be adjusted to net monthly income by subtracting the following:

(1) disability-related expenses paid by the family, including, but not limited to, medical payments as a result of disability and/or illness of family member,

- (2) prescribed family medications and diets,
- (3) rent or home mortgage payments, and
- (4) family obligations imposed by court order.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 6. MAXIMUM AFFORDABLE PAYMENT

40 TAC §106.965

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.965. *Scope of Subchapter.*

(a) The maximum affordable payment shall be the maximum amount the Division ~~[commission]~~ pays for a medical or medically related service and interpreter services. However, the payment:

- (1) shall not be so low as to effectively deny a person a necessary service; and
- (2) shall permit exceptions so that individual needs can be addressed.

(b) The current schedule of maximum affordable payments is maintained for public view and inspection in all offices.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. BLINDNESS EDUCATION, SCREENING AND TREATMENT PROGRAM

40 TAC §§106.1101, 106.1103, 106.1105, 106.1107

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1101. *Purpose and Authority.*

These sections describe the Blindness Education, Screening, and Treatment (BEST) Program administered by the Department of Assistive and Rehabilitative Services, Division for Blind Services ~~[Texas Commission for the Blind]~~ under the authority of Human Resources Code, §91.027. The Division ~~[Commission]~~ is authorized to implement the program only to the extent that funds are available under Transportation Code, §521.421(f).

§106.1103. *Definitions.*

The following words and terms, when used in this subchapter ~~[these sections]~~, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Division--Division for Blind Services ~~[Commission--Texas Commission for the Blind]~~.

(2) Resident--An individual who is physically present within the geographic boundaries of Texas; has an intent to remain within the state, either permanently or for an indefinite period; actually maintains an abode (e.g., house, apartment, etc., but not merely a post office box) within this state.

(3) Program--The Blindness Education, Screening and Treatment Program.

(4) Vision Screening--A nondiagnostic procedure that uses uniform testing techniques to assess the person's risk of vision loss and eye disease.

§106.1105. *Vision Screening Services.*

(a) To be eligible to receive program vision screening services, an individual must be an adult resident of the state.

(b) Vision screening services may be provided through a contractor.

(c) Vision screenings shall be conducted by:

(1) Persons who have attended and completed vision screening training from the Texas Division of Health and are currently certified as vision screeners; or

(2) Persons who have been trained by a vision screener currently certified by Department of State Health Services ~~[Texas Department of Health]~~ as a vision screener; or

(3) Persons who are eye care professionals licensed by the State of Texas (optometrists and ophthalmologists); or

(4) Persons who are trained and supervised by an eye care professional licensed by the State of Texas.

(d) Persons receiving vision screenings shall receive the screening results and, if necessary, a recommendation regarding the need for a follow-up examination by an eye care professional.

(e) When a referral is made for an eye examination to another agency or organization, the referral agency or organization's rules shall apply. A referral by the BEST program is not an endorsement of another agency, organization or eye care professional by the Department

of Assistive and Rehabilitative Services, Division for Blind Services [Texas Commission for the Blind].

§106.1107. Treatment Services.

(a) The purpose of treatment services is to prevent blindness by providing medical or surgical intervention to individuals at risk who are not covered under an adequate health benefit plan.

(b) To be eligible to receive treatment services from the program, an individual must be an adult resident of the state who:

(1) has been referred to the program by the individual's treating physician or optometrist;

(2) has certified to the physician or optometrist that the individual does not have health insurance or other available resources with which to pay for prescribed treatment to prevent blindness; and

(3) has been certified by the physician or optometrist as having a medically urgent eye condition that poses an imminent risk of permanent and significant visual loss if not treated with surgery or medical intervention.

(c) Medically urgent eye conditions shall include glaucoma, diabetic retinopathy, and detached retina. Any other medical condition, to qualify, must be determined to be medically urgent by both the referral's physician and the Division's [Commission's] ophthalmologic consultant or his designee.

(d) The BEST program is funded with voluntary donations. It is expected that service demand will exceed program resources. Therefore, funds may not be available for treatment services at the time an individual is referred for assistance.

(e) If an eligible individual is denied services by the program based on the inadequacy of donations to cover the cost of services, the physician may request that the individual be placed on a waiting list pending receipt of adequate funds. Individuals on the waiting list shall be served in order by referral date and time.

(f) All treatment services, including prescription drugs, must be approved in advance by the program to qualify for payment. All prescribed treatment services and requested payments must be itemized on the program's application form.

(g) Over-the-counter and nonprescription drugs are not covered by the program. Program assistance with the cost of eye-related drugs prescribed by a physician to prevent blindness shall be limited to the time the drugs are prescribed by the treating physician or optometrist or one year, whichever is less. The following are the procedures for payment for prescription drugs:

(1) Payments for approved prescription drugs shall be made only to the individual's pharmacy of choice.

(2) The Division [Commission] shall pay for the prescription upon receiving an invoice.

(h) Payment for eye examinations that are a follow-up to a prescribed treatment paid for by the BEST Program and determined by a physician as medically necessary for chronic eye conditions such as glaucoma and diabetic retinopathy shall be limited to two examinations in the 12 months following surgery.

(i) Payments for treatment services shall be based on the agency's adopted rate schedule for eye-related medical services as specified in §101.3611 [§159.6] of this title [chapter] (also known as the agency's Maximum Affordable Payment Schedule).

(j) Claims for payment must be received within 90 days from the date of each service. Claims received by the program that are lacking the information necessary for processing shall be denied as incom-

plete claims. The resubmission of the claim containing the necessary information must be received by the program within 60 days from the last denial date or payment will be declined. Excepted from this requirement is the payment for refills of drugs prescribed during the allowed period of one year.

(k) The program shall not pay cancellation charges, charges for missed appointments, or any other charge incurred other than for the actual provision of services.

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SUBCHAPTER G. BUSINESS ENTERPRISES OF TEXAS

40 TAC §§106.1201, 106.1203, 106.1205, 106.1207, 106.1211, 106.1213, 106.1215, 106.1217, 106.1219, 106.1221, 106.1223, 106.1225, 106.1227, 106.1229, 106.1231, 106.1233

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1201. Legal Authority.

(a) Program name. The Department of Assistive and Rehabilitative Services/Division for Blind Services (DARS/DBS) [Commission] shall carry out its responsibilities for licensing blind persons to operate vending facilities on state, federal, and other property through its state program entitled Business Enterprises of Texas, formerly known as Business Enterprises Program. Any references still in existence to Business Enterprises Program shall mean Business Enterprises of Texas.

(b) Federal authority. The DARS/DBS [Commission] operates Business Enterprises of Texas under the authority of the Randolph-Sheppard Act (20 U.S.C. §107 et seq.) and implementing regulations (34 CFR §395.1 et seq.).

(c) State authority. The DARS/DBS [Commission] operates Business Enterprises of Texas under the authority of Texas Human Resources Code, Title 5, Chapter 94, and is authorized in §94.016 to administer BET in accordance with the provisions of the Randolph-Sheppard Act.

(d) Statutory References. Unless expressly provided otherwise, a reference to any portion of a statute, rule, or regulation applies to all reenactments, revisions, or amendments of the statute, rule, or regulation.

§106.1203. Definitions.

The following words and terms, when used in this subchapter [these rules], shall have the following meanings, unless the context clearly indicates otherwise. Unless expressly provided otherwise, words in the present or past tense include the future tense, and the singular includes the plural and the plural includes the singular. The masculine gender includes the feminine and neuter genders.

(1) Act--Randolph-Sheppard Act (20 U.S.C. Ch. 6A, §107 et seq.).

(2) Application--The "BET Facility Assignment Application" form used by licensees to apply for a facility.

(3) BET--Business Enterprises of Texas.

(4) BET Assignment--The document that sets forth the terms and conditions for management of a BET facility by the individual named as manager.

(5) BET director--The administrator of Business Enterprises of Texas; or, if there be no person in that capacity, the person designated by the Assistant Commissioner for the Division for Blind Services [executive director] to perform that function; or if there be none, the Assistant Commissioner [executive director].

(6) BET facility--Automatic vending machines, cafeterias, snack bars, cart service, shelters, counters and such other appropriate auxiliary equipment which may be operated by BET managers and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of tickets for any lottery authorized by state law.

(7) BET manual--"Business Enterprises of Texas Manual of Operations," which contains these rules adopted by the DARS/DBS [Commission's board] and accordant instructions and procedures by which BET facilities are to be managed.

(8) Blind (person who is)--A person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

~~[(9) Board--The Commission's governing body appointed pursuant to state law.]~~

(9) [(40)] Business day--A day on which state agencies are officially required to be open during their normal business hours.

(10) [(41)] DARS/DBS--Department of Assistive and Rehabilitative Services/Division for Blind Services. ~~[Commission--Texas Commission for the Blind.]~~

(11) [(42)] DARS/DBS [Commission] staff--Employees of the DARS/DBS [Commission] who have been delegated the authority by the Assistant Commissioner [executive director] or his designee to take an action contained in these policies.

(12) [(43)] ECM--Elected Committee of Managers.

(13) [(44)] Assistant Commissioner--Assistant Commissioner for the Division for Blind Services. ~~[Executive Director--The Commission's chief executive officer.]~~

(14) [(45)] Expendables--Items that require a low capital outlay and have a short life expectancy, such as, by way of illustration and not limitation, smallwares, thermometers, china, glass, silverware, sugar and napkin dispensers, salt and pepper shakers, serving trays, mops, brooms, knives, spreaders, serving spoons, and ladles.

(15) [(46)] Individual with a significant disability--An individual who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility or communication).

(16) [(47)] Initial assignment--The first BET facility to which a manager is assigned after being licensed.

(17) [(48)] Level 1 facility--A BET facility which in the prior year generated a net income after set-aside fees equal to or less than 170% of the median net income after set-aside fees of all BET managers for the prior year or, in the case of a new BET facility, is reasonably expected to generate said income.

(18) [(49)] Level 2 facility--A BET facility which in the prior year generated a net income after set-aside fees greater than 170% of the median net income after set-aside fees of all BET managers for the prior year or, in the case of a new BET facility, is reasonably expected to generate said income.

(19) [(20)] Manager--A licensee who is operating a BET facility, and which shall have the same meaning assigned to "vendor" in 34 CFR 395.1.

(20) [(21)] Net sales--All sales, excluding sales tax.

(21) [(22)] Other income--Money received by a manager from sources other than direct sales, such as vending commissions or subsidies.

(22) [(23)] State property--Lands and buildings owned, leased, or otherwise controlled by the State of Texas; and equipment and facilities purchased and/or owned by the State of Texas.

(23) [(24)] Vending machine--For the purpose of assigning vending machine income, a coin or currency operated machine that dispenses articles or services, except those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services. Machines providing services of a recreational nature and telephones shall not be considered to be vending machines.

(24) [(25)] Proper and authorized instruction by DARS/DBS [Commission] staff--Instructions in accordance with applicable statutes and program rules, regulations, and procedures.

(25) [(26)] Licensee--An individual who has been licensed by the DARS/DBS [Commission] as qualified to apply for and operate a BET facility, and which shall have the same meaning assigned to "blind licensee" in 34 CFR 395.1.

§106.1205. General Policies.

(a) Objectives. The objectives of Business Enterprises of Texas shall be:

(1) to provide employment opportunities for qualified individuals; and

(2) to administer a continuing process of career development for managers which encourages them to move into the private sector of business.

(b) Relationship of BET to Vocational Rehabilitation Program. The intent of Business Enterprises of Texas, as authorized in the Randolph-Sheppard Act and the Texas Human Resources Code, is to stimulate and enlarge the economic opportunities for the citizens of Texas who are blind or visually impaired by establishing a vending facility program in which such persons who are in need of employment are given preference in the operation of vending facilities selected and installed by the DARS/DBS [Commission]. The DARS/DBS [Commission] is required to administer BET in accordance with the DARS/DBS

[Commission's] vocational rehabilitation objectives. Therefore, a consumer receiving services from the Vocational Rehabilitation Program whose employment goal is to be a licensed manager shall have reached an employment outcome as that term is used in the Rehabilitation Act of 1973 when the consumer is licensed by the DARS/DBS [Commission] and is managing a BET facility. The licensed manager shall not be considered an employee of the DARS/DBS [Commission], state, or federal government.

(c) Full-time employment. Managing a BET facility shall constitute full-time employment. Full-time shall mean being actively engaged in the management of a BET facility for the number of hours necessary to achieve satisfactory operation of the facility. The manager shall be available for necessary visits by DARS/DBS [Commission] staff to allow inspection, advice, and consultation as may be required to ensure satisfactory operation. Management means the personal supervision of the day-to-day operation of the assigned BET facility by the assigned manager.

(d) Subcontracting. The management of a BET facility shall not be subcontracted except for temporary periods of time approved by the DARS/DBS [Commission] or in those circumstances in which the DARS/DBS [Commission] deems that subcontracting the operation of some parts of the facility are in the best interest of BET. In all events, subcontracting shall require the prior written consent of the DARS/DBS [Commission]. This subsection shall not affect subcontracts in existence on the effective date of this subsection. This subsection does not apply to equipment or machines allowed to be placed within the facility and not owned by or arranged for by the DARS/DBS [Commission].

(e) Availability of funds. The administration of BET and the implementation of these policies are contingent upon the availability of funds for the purposes stated herein.

(f) BET manual. All BET policies adopted by DARS/DBS [the board] shall be included in the BET manual. The BET director shall ensure that each licensee is provided with a copy of the manual and any revisions thereto. The licensee shall be responsible for reading the manual and acknowledging in writing that he or she has read and understands its contents. The BET director shall insure that the BET manual contains procedures whereby licensees may obtain assistance in understanding BET policies and procedures.

(g) Accessibility of BET materials. All information produced by and provided to licensees by the DARS/DBS [Commission] shall be in an accessible format. When possible, materials will be sent in the format requested by the licensee.

(h) Nondiscrimination.

(1) VR and BET participants. The DARS/DBS [Commission] shall not discriminate against any blind person who is participating in or who may wish to participate in Business Enterprises of Texas on the basis of sex, age, religion, color, creed, national origin, political affiliation, or physical or mental impairment, insofar as such impairment does not preclude satisfactory performance.

(2) BET facilities. Managers shall operate BET facilities without discriminating against any present or prospective supplier, customer, employee, or other individual who might come into contact with the facility on the basis of sex, age, religion, color, creed, national origin, political affiliation or physical or mental impairment.

(i) Emergencies. The BET director is authorized to expend funds on an emergency basis for the purpose of protecting the state's investment in a BET facility not to exceed \$15,000 in a fiscal year or \$2,500 per facility incident.

(j) Temporary management. From time to time it becomes necessary to designate a temporary manager to an unassigned facility to ensure uninterrupted service to the host and customers. Temporary assignments shall be for the period stated in the assignment document. Subsequent to the expiration of the timeframe stated in the assignment, the BET director shall review the temporary assignment every 90 days to determine the need for continuation of the temporary assignment. The temporary arrangement shall terminate when a new manager is assigned to the facility. The DARS/DBS [Commission] shall choose temporary managers from licensees; if a licensee is not available, the DARS/DBS [Commission] may contract with a private entity. Before a licensee is offered a temporary opportunity, the regional BET staff and local ECM representative shall discuss which licensee in the geographical location has the requisite skills to successfully manage the facility temporarily. Preference shall be given to temporarily improving the income to lower income managers when more than one individual is qualified.

§106.1207. BET Administration.

(a) The Assistant Commissioner of the Division for Blind Services is authorized to: ~~[Executive director. The executive director (subject to Subchapter A, Chapter 531, Government Code, pertaining to the authority of the Commissioner of the Health and Human Services Commission over certain agency functions) is authorized to:]~~

(1) ~~Supervise DARS/DBS; [establish personnel policies for Commission personnel employed in BET;]~~

(2) establish BET plans, which at a minimum shall provide for all services, assistance, training, supervision, and planning necessary for the implementation and administration of BET; and

(3) delegate authority to implement these rules to the BET director.

(b) BET director. In addition to the responsibilities delegated to the BET director by the Assistant Commissioner ~~[executive director]~~, the BET director shall be responsible for:

(1) implementing BET personnel policies and development plans; and

(2) disseminating the information developed by the Assistant Commissioner ~~[executive director]~~ related to BET plans and policies to all licensees.

(c) Consultants.

(1) If the DARS/DBS [Commission] determines a consultant is necessary to assist a manager or protect the interests of the agency, the DARS/DBS [Commission] shall contract with a consultant and may pay for the consultant out of the facility revenues. The DARS/DBS [Commission] shall not contract with a consultant when it possesses the expertise and staffing level to provide the consulting services. The DARS/DBS [Commission] shall not pay for a consultant with facility revenues if the manager qualifies for post-employment services as that term is defined in The Rehabilitation Act of 1973, as amended.

(2) If the DARS/DBS [Commission] determines a consultant is necessary to assist a manager who is currently in a facility, the BET director shall consult with the manager prior to contracting with a consultant. The final authority, however, for contracting with a consultant shall rest with the DARS/DBS [Commission].

(3) All consultant contracts entered into by the DARS/DBS [Commission] for the provision of support and mentoring services to the manager shall not exceed three years in duration, provided, however, that the contract may be extended for additional periods not to exceed one year each. No contract shall be extended until the manager

has been consulted. The final discretion to extend the contract shall rest with the DARS/DBS [Commission].

(4) If the DARS/DBS [Commission] determines it necessary to contract with a consultant to protect the interests of the DARS/DBS [Commission], the DARS/DBS [Commission] shall enter into a separate agreement for that purpose with such terms and conditions as the DARS/DBS [Commission] may deem appropriate.

§106.1211. BET Licenses.

(a) Natural persons. Licenses to manage a BET facility shall be issued only to natural persons.

(b) Prerequisites. No person may be licensed until such person has satisfactorily completed all required BET training and otherwise continues to satisfy the criteria for entry into BET.

(c) Issuance. A license issued by the DARS/DBS [Commission] shall bear the name of the licensee, date of issue, and contain such other information as may be deemed to be appropriate from time to time by the Assistant Commissioner [~~executive director~~]. The license shall be signed by the Assistant Commissioner [executive director] on behalf of the DARS/DBS [Commission] and State of Texas.

(d) Display. The license or a copy of the license shall be displayed prominently in each location of the enterprise to which the manager is assigned.

(e) Property right. A license shall not create any property right in the licensee to whom it is issued and shall be deemed only to inform the public and other interested parties that the licensee has successfully completed BET training and is qualified and authorized to operate a BET facility.

(f) Transferability. A license is not transferable.

(g) Term. A license issued by the DARS/DBS [Commission] shall be valid for an indefinite period, subject, however, to termination, revocation, or suspension pursuant to conditions specified in these policies pertaining to termination of license for reasons other than unsatisfactory performance and administrative action based on unsatisfactory performance.

§106.1213. Initial and Career Advancement Assignment Procedures.

(a) Purpose. This section defines the process for the initial and career advancement assignments of managers. It is the goal of the process to provide a fair, unbiased, and impartial process for selection, transfer, and promotion.

(b) Initial assignment. Upon successful completion of BET training, the initial assignment for a newly-licensed licensee shall be made by the BET director. The initial assignment shall be for a minimum of 12 months. The BET director shall make the assignment based on the following:

- (1) availability of a Level 1 facility;
 - (2) recommendations from the BET training specialist and the ECM chairperson;
 - (3) licensee's training records;
 - (4) licensee's geographical concerns; and
 - (5) any other circumstances on a case-by-case basis.
- (c) Career advancement assignments.

(1) Availability. All career advancement opportunities are dependent upon the availability of BET facilities. No facility with a projected annual income equal to the annual median income level of all managers or \$30,000, whichever is the greater after set-aside fees,

shall be used for an initial assignment unless it has first been advertised and made available to all licensees in the BET Program and no one has been assigned to such facility as a result of the advertising process.

(2) Notice. As BET facilities become available and ready for permanent assignment, written notice of such availability shall be given to all licensees within 30 business days.

(3) On-site visits. An advertised facility shall be available for onsite visits upon reasonable notice by applicants.

(4) Eligibility. To apply for an available facility, a licensee must meet the following requirements:

(A) The licensee must have successfully managed a BET facility for a minimum of one year.

(B) The licensee must have been current on all accounts payable for the preceding 12 months prior to the date of the facility announcement.

(C) The licensee must not be on probation under the section of these rules relating to administrative actions.

(D) The licensee must meet eligibility requirements of the facility's host organization.

(E) The licensee must not have submitted two or more insufficient fund checks to the DARS/DBS [Commission] within the 12 months prior to the date of the facility announcement.

(F) The licensee must not have submitted two or more late reports within the 12 months prior to the date of the facility announcement.

(G) If unassigned, the licensee must have fulfilled all resignation requirements in the licensee's last facility or be displaced and eligible to apply for a facility.

(H) The manager must have an inventory of merchandise and expendables in the manager's current facility as the DARS/DBS [Commission] has determined sufficient for its satisfactory operation.

(I) The licensee must satisfy the DARS/DBS [Commission] that he can acquire the merchandise and expendables required for the available facility.

(J) A licensee who has been placed on probation is not eligible for promotion and transfer for 30 days following release from probation.

(K) A licensee who has been placed on probation twice within a twelve-month period is not eligible for promotion or transfer for six months following release from probation.

(L) A licensee who has been placed on probation three times within a two-year period is not eligible for promotion or transfer for one year following release from probation.

(5) BET application deadline. A licensee may apply for an available facility by submitting an application not later than the 12th business day (exclusive of date of mailing) after the date the facility notice was mailed. The submission date shall be:

(A) the date the application is delivered to the DARS/DBS [Commission]; or

(B) 3 days after deposit of the application in the United States mail, whichever is earlier; or

(C) the date the application is delivered to an overnight courier.

(6) BET application contents. A copy of the current form of the application shall be included in the BET manual. The substance of the application form shall not be modified except by action of the DARS/DBS [Commission's board]. Modifications shall be provided to all licensees prior to their effective date. Upon request by the manager and prior to the submission deadline, assistance is available from the local BET staff and ECM representative in completing the BET Application Form.

(7) Preliminary review of applications. DARS/DBS [Commission] staff and the ECM representative in each geographic area in which the applying licensees are currently located shall review all applications from their areas and shall verify the applicant's eligibility. In the event an ECM representative is an applicant for an available BET facility, the ECM chairperson shall appoint another ECM member for the review. Completed applications shall then be forwarded to the BET director who shall provide copies to the ECM and DARS/DBS [Commission] staff in the area in which the available facility is located.

(8) Level 1 assignments. Assignments to Level 1 facilities shall be made by the BET director after reviewing the recommendations and assessments of all applicants conducted by the ECM representative and DARS/DBS [Commission] staff for the regions in which the available facilities are located.

(9) Level 2 assignments. For Level 2 assignments, the following additional procedures shall apply:

(A) Business plan. An applicant must submit a business plan to the BET director no later than the 20th business day after the postmark date on the notice of facility availability. Upon request by an applicant, the DARS/DBS [Commission] staff in the area in which the available facility is located shall provide a standard packet of information to the applicant containing information necessary to prepare the business plan. The DARS/DBS [Commission] staff shall deliver the packet to the applicant no later than the 3rd business day after receiving a request.

(B) Establishment of pool of impartial and qualified individuals. The DARS/DBS [Commission] shall establish and maintain a pool of qualified individuals. The pool members shall be individuals who:

(i) have no personal, professional, or financial interest that would be in conflict with the objectivity of the individual;

(ii) neither have nor have had any association with the DARS/DBS [Commission] or Business Enterprises of Texas prior to being considered as a pool member; and

(iii) have at least 5 years experience in business at a managerial or executive level, including experience in budget preparation and administration, personnel supervision or management; and administration of business plans or equivalents to business plans in the sector of business in which the person has experience.

(C) Evaluation of business plans. All business plans shall be reviewed and evaluated by an individual chosen at random from the pool of impartial and qualified individuals. Business plans shall be evaluated and scored based on a scoring system of 100 points. The evaluations and scores shall then be forwarded to the BET director for consideration by the selection panel in the selection process.

(D) Selection panel. A selection panel consisting of one representative from the ECM, one DARS/DBS [Commission] staff member, and one individual from the pool of impartial and qualified individuals shall be chosen by means of a computer program that selects randomly from a database. The selection of each panel member shall be from among all persons within their respective categories, except

that the impartial member may not be the individual who evaluated the business plans. If the member of a category of panel members who is selected is unable or refuses to serve, the BET director shall use the same method of random selection until three members are chosen.

(E) Presiding officer. The impartial panel member shall serve as the presiding officer of the selection panel.

(F) Interview notices. Applicants shall be notified by first class U.S. Mail of the date, place and time of the selection panel interview no fewer than 10 business days prior to the convening of the selection panel.

(G) Selection panel materials. Completed applications, business plans, and each applicant's most recent performance evaluation shall be provided to the selection panel members no fewer than 5 business days prior to the date the selection panel is to convene.

(H) Duties of selection panel. The selection panel shall review the documents provided and interview the applicants. The panel shall prepare a tabulation sheet for each manager on which the member will enter the business plan score and performance evaluation score previously received by the applicant. A third score shall be awarded by each panel member for the interview performance of the applicant. Each interview shall be rated on a maximum score of 100 based on such areas as the quality of the applicant's presentation, knowledge of the submitted business plan, and preparation for the assignment. Each applicant shall be interviewed on the same areas and given a similar amount of time to present their case. While questions must necessarily be tailored to each individual's business plan, presentation, and knowledge, the panel should strive to conduct the interviews as similarly as possible. The selection panel shall then rank the top three applicants. An applicant's ranking shall be determined after weighting each applicant's business plan score by 20%, weighting each applicant's most recent performance evaluation by 20%, and weighting the average interview score received by panel members by 60%. In the event of a tie in scores, the panel will award one point to whichever applicant has the greater length of accumulated service as an assigned manager in a BET facility according to BET records, thereby breaking the tie. The selections shall be transmitted to the BET director, who shall in turn notify the highest ranked applicant of the decision of the selection panel. The available facility shall be offered to the applicants in order of ranking.

(I) Reports of improper contact. Members of the selection panel must report alleged improper contacts to the BET director or the Assistant Commissioner [executive director]. Improper contact is defined as [any] communication with a member of the selection panel for the purpose of improperly influencing or manipulating[; directly or indirectly,] the selection of an applicant for the facility being considered for assignment, by offering a thing or act of value, including promises of future benefit or by threat. Nothing contained in this section, however, shall be deemed to prohibit any licensee from endorsing or supporting any candidate for selection by furnishing a letter or other document to that effect to be included with the applying licensee's application. At the conclusion of the selection panel's responsibilities, each panel member shall be required to sign a statement certifying whether the member had, or had knowledge of, an improper contact during the selection proceedings.

(J) Process for investigating reports of improper contact. When alleged improper contact is reported, each applicant for the facility under consideration and the ECM Chairman shall be informed as to the occurrence of an alleged improper contact. The information provided to the applicants shall describe the nature of the alleged improper contact but shall not divulge the identities of any persons allegedly participating in such improper contact. Each applicant may make objection to continuation by the existing panel and request that

a new panel be formed to select the manager for the available facility. The BET Director, upon the request of any applicant for the facility, shall determine if the improper contact is such as to require that the panel be disbanded and a new panel formed. In making that decision, the BET Director shall consider all relevant factors, including the objections, if any, of the applicants, to determine if the improper contact is likely to influence the decision of the selection panel. If the BET Director determines that the improper contact is likely to influence the selection process, the BET Director shall direct that the panel be disbanded and that a new panel be formed to consider the selection for the facility being considered. The BET Director shall inform all applicants of his decision to continue the selection process with the existing panel or to form a new panel and shall state the basis of the decision. The actions prescribed as a consequence of improper contact set forth in policies pertaining to administrative actions shall apply whether or not any improper contact results in the panel being disbanded.

(K) Exceptions to assignment and selection procedures. Unusual circumstances may require exceptions to assignment and selection procedures. Exceptions to these procedures shall be made only if the circumstance is not covered by assignment procedures and failure to react to the circumstance would be detrimental to BET or a licensee. Notwithstanding anything in this section, no exceptional procedure shall result in the removal of a manager from a facility except for reasons contained in policies pertaining to administrative actions. Assignment and selection decisions that are exceptions to these procedures shall be made by the BET director after discussing relevant information with the ECM chairperson and receiving the chairperson's recommendation. Should a decision contrary to the ECM chairperson's recommendation be made, the BET director shall provide a written explanation of the decision to the ECM chairperson.

§106.1215. Fixtures, Furnishings, and Equipment; Initial Inventory and Expendables.

(a) Survey. When a BET facility becomes available for assignment, DARS/DBS [Commission] staff shall conduct a survey of the site to determine the fixtures, furnishings, and equipment required to allow the facility to operate in accordance with projections by DARS/DBS [Commission] staff as to the potential for the facility. When such facility is an existing one, the survey shall consider the need for replacement or repair of fixtures, furnishings, and equipment.

(b) Facility plan. DARS/DBS [Commission] staff shall prepare a detailed schedule of the requirements for fixtures, furnishings, and equipment for the facility, including specifications for each item required and a site plan of the facility depicting the placement of the fixtures, furnishings, and equipment within the facility.

(c) Acquisition, placement, and installation. When satisfied as to the fixtures, furnishings, and equipment required for the facility, DARS/DBS [Commission] staff shall cause the necessary fixtures, furnishings, and equipment to be purchased or otherwise acquired and placed and/or installed in or upon the facility in accordance with the approved plans.

(d) Ownership.

(1) All state fixtures, furnishings, and equipment within the facility shall at all times remain the property of the State of Texas. Their use by the facility manager shall be as a licensee only.

(2) The DARS/DBS [Commission] shall have the sole authority to direct, control, transfer, and dispose of such fixtures, furnishings, and equipment as it determines to be appropriate and necessary.

(e) Modifications. No modifications or alterations shall be made to state-owned fixtures, furnishings, and equipment by any person, firm, or entity without the express prior written approval of

the DARS/DBS [Commission], which shall be granted or not granted solely at the discretion of the DARS/DBS [Commission].

(f) Upkeep and maintenance.

(1) The manager assigned to a facility shall be provided with manuals, instructions, and guides in an accessible format to state-owned fixtures, furnishings, and equipment within the facility.

(2) It shall be the responsibility of the manager to keep DARS/DBS [Commission] fixtures, furnishings, and equipment in a clean and sanitary condition and to perform maintenance required or recommended by the manufacturers or vendors of the fixtures, furnishings, and equipment.

(3) The manager shall keep and maintain accurate records of all maintenance performed on DARS/DBS [Commission] fixtures, furnishings, and equipment. Any failure or refusal of the manager to perform the maintenance referred to herein shall result in the manager being required to reimburse the DARS/DBS [Commission] for any cost or expense resulting from such failure or refusal.

(g) Repairs and replacements.

(1) The DARS/DBS [Commission] shall be responsible for all necessary repairs of any of the state-owned fixtures, furnishings, and equipment located within the facility except for repairs necessitated by the negligence, abuse, or misuse of the fixtures, furnishings, or equipment by the manager or the manager's employees. The cost of repairs necessitated by negligence, abuse, or misuse by the manager or the manager's employees shall be the sole responsibility of the manager. Failure to make such repairs shall result in administrative action pursuant to these rules.

(2) The BET director shall establish and implement procedures for effecting the timely necessary repairs and for the payment for such services. There shall be included in these procedures specific procedures for initiating repairs by the manager and a list of approved vendors for repairs, which shall be provided to each manager as published and as revised from time to time.

(3) Under no circumstances is a manager authorized to have the cost of repairs charged to the DARS/DBS [Commission] or have repairs made by anyone other than approved vendors unless specific authority to do so has been given to the manager in writing by DARS/DBS [Commission] staff. Each vendor included in the approved list of vendors for repairs shall be informed by DARS/DBS [Commission] staff of this prohibition and of the procedures for authorized repairs and for payment for services.

(4) DARS/DBS [Commission] staff on their own initiative or upon request by a manager shall determine the need for replacement of any fixtures, furnishings, or equipment. If such need is determined, DARS/DBS [Commission] staff shall report the need to the BET director. If authorized by the BET director, replacement fixtures, furnishings, or equipment shall be acquired from available BET funds.

(5) Fixtures, furnishings, and equipment shall not include expendables. Each manager of a facility shall be responsible for replacing all such items with items of comparable quality as those being replaced and originally furnished by the DARS/DBS [Commission].

(h) Initial inventory of merchandise and expendables for newly-licensed managers. The DARS/DBS [Commission] shall furnish without charge the initial inventory of merchandise and expendables for the initial assignment of a newly-licensed licensee. The initial inventory of merchandise and expendables shall be sufficient, as projected by the DARS/DBS [Commission], to provide the manager with merchandise and expendables for 30 days.

- (i) Subsequent inventory of merchandise and expendables.

(1) The manager shall maintain an inventory of merchandise and expendables in the same quantity as the initial merchandise and expendables transferred to the manager upon assignment to the facility. If the DARS/DBS [Commission] determines that changed circumstances require a different amount of merchandise and expendables, the DARS/DBS [Commission] shall communicate in writing to the manager the new amount of merchandise and expendables. If a new amount of merchandise and expendables is necessary to provide for the satisfactory operation of the facility, that new amount of inventory must be maintained by the manager.

(2) Managers assigned to any facility other than their initial assignment in Texas shall acquire the merchandise and expendables as determined by the DARS/DBS [Commission] to be sufficient to satisfactorily operate the facility. To effectively expedite the changeover in facilities, when a facility is already stocked with merchandise and expendables, the existing stock shall become part of the required inventory stock level of the incoming manager. The amount owed by the incoming manager for the existing stock shall be the amount agreed to by the affected parties. If the existing inventory is the property of the state, the amount owed by the incoming manager shall be the amount paid with state funds.

(j) Purchases on credit. During the first three years of being an active manager in the Program, managers must notify the DARS/DBS [Commission] in advance of any purchase of merchandise and expendables on credit.

(k) Obtaining an advance from the DARS/DBS [Commission] for initial inventory. Managers may apply to the DARS/DBS [Commission] for an advance to purchase an initial inventory of merchandise and expendables. The Manager must satisfy any advance received from the DARS/DBS [Commission] to purchase merchandise on subsequent assignments within a 12-month period and make monthly payments in the amount established by the DARS/DBS [Commission]. The granting of an advance is discretionary and may be granted only under the following conditions:

(1) The manager must satisfy the DARS/DBS [Commission] in writing as to why the advance is needed and why the funds are not available from other sources.

(2) Before an advance is granted by the DARS/DBS [Commission] pursuant to this section, the manager must submit evidence satisfactory to the DARS/DBS [Commission] that the financing has been sought from at least two commercial financial institutions, such as, by way of example, the Small Business Administration, banks, savings and loans, credit unions, or like institutions.

(3) The manager shall satisfy the DARS/DBS [Commission] as to the manager's ability to repay the advance within 12 months.

(4) Managers with outstanding balances on advances are not eligible for transfer to another assignment.

(l) Transfer of fixtures, furnishings, equipment, and inventory of merchandise and expendable items. When a manager is assigned to an existing BET facility, the responsibility for the fixtures, furnishings, and equipment of that facility, as well as its inventory of merchandise and expendable items, shall be transferred to the incoming manager. The BET director shall develop and implement procedures for effecting such transfers to assure that both the incoming and outgoing managers have full knowledge of the nature and condition of the items being transferred.

§106.1217. Set-Aside Fees.

(a) Purpose. It is the policy of the Department of Assistive and Rehabilitative Services/Division for Blind Services to require from managers the payment of a set-aside fee based on the monthly net proceeds of their BET facilities. The purpose of requiring such payment is:

(1) to promote to the greatest possible extent the concept of a manager being an independent business person;

(2) to cause BET to be to the greatest extent possible, with due regard to other considerations, self-supporting;

(3) to encourage and stimulate growth in BET; and

(4) to provide incentives for the increased employment opportunities for blind Texans.

(b) Use of funds. To the extent permitted or required by applicable laws, rules, and regulations, the funds collected as set-aside fees shall be used by the Department of Assistive and Rehabilitative Services/Division for Blind Services for the following purposes:

(1) maintenance and replacement of equipment for use in BET;

(2) purchase of new equipment for use in BET;

(3) management services;

(4) assuring a fair minimum return to managers; and

(5) the establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time if it is so determined by a majority vote of managers assigned to a facility, after the Department of Assistive and Rehabilitative Services/Division for Blind Services provides to each such manager information on all matters relevant to such proposed purposes.

(c) Method of computing net proceeds.

(1) Net proceeds is the amount remaining from the sale of merchandise of a BET facility, all vending machine income, and other income accruing to the manager from the facility after deducting the reasonable and necessary cost of such sale, but excluding set-aside charges required to be paid by the manager. Net sales are all sales, excluding sales tax. The manager may not remove any items from the inventory or other stock items of the facility unless the manager pays for those items at the actual cost basis.

(2) Costs of sales that may be deducted from net sales to calculate net proceeds in a reporting period shall be limited to:

(A) cost of merchandise sold;

(B) wages paid to employees;

(C) payroll taxes; and

(D) the following reasonable miscellaneous operating expenses that are directly related to the operation of the BET facility:

(i) discretionary expenses, not to exceed 1.5% of the monthly net sales, or \$150, whichever is greater;

(ii) rent and utilities authorized in the permit or contract;

(iii) business taxes, licenses, and permits;

(iv) telecommunication services;

(v) liability, property damage, and fire insurance;

(vi) Worker's Compensation insurance;

(vii) employee group hospitalization/health insurance;

(viii) employee retirement contributions (the plans must be IRS-approved and not for the manager);

(ix) janitorial services, supplies, and equipment;

(x) bookkeeping and accounting services;

(xi) trash removal and disposal services;

(xii) service contracts on file with the Department of Assistive and Rehabilitative Services/Division for Blind Services;

(xiii) legal fees directly related to the operation of the facility (legal fees directly or indirectly related to actions against governmental entities are not deductible);

(xiv) medical expenses directly related to accidents that occur to employees at the facility, not to exceed \$500;

(xv) purchase of personally owned or leased equipment that has been approved by the Department of Assistive and Rehabilitative Services/Division for Blind Services for placement in the facility;

(xvi) repairs and maintenance to personally owned or leased equipment that has been approved by the Department of Assistive and Rehabilitative Services/Division for Blind Services to be placed within the facility;

(xvii) consumable office supplies; ~~and~~

(xviii) exterminator/pest control services; ~~and~~[-]

(xix) mileage expenses for vehicles required for the direct operation of vending facilities at the rate and method allowed by the Internal Revenue Service at the time the expenses are incurred.

(3) All reports by managers shall be accompanied by such supporting documents as may be required by the Department of Assistive and Rehabilitative Services/Division for Blind Services.

(d) Method of computing monthly set-aside fee. The monthly set-aside fee of each manager shall be a percentage of the amount that results from applying the schedule in paragraphs (1) - (5) of this subsection. The provisions relative to the percentage required to be paid as set-aside fees shall be reviewed by the Department of Assistive and Rehabilitative Services/Division for Blind Services with the active participation of the ECM at least annually during the first quarter of each state fiscal year. The review shall be for the purpose of determining whether the percentage needs to be adjusted in order to meet the needs of the program. The ECM shall be provided with all relevant financial and other information concerning the financial requirements of the program no fewer than 60 days prior to any review by the Department of Assistive and Rehabilitative Services/Division for Blind Services in which the percentage is to be considered. For the period from the effective date of this amended rule until the Department of Assistive and Rehabilitative Services/Division for Blind Services undertakes its first annual review of the set-aside fee, the percentage shall be 0 percent.

(1) On net proceeds of \$1 to \$999.99, the amount shall be 2% of the manager's net proceeds.

(2) On net proceeds of \$1,000 to \$1,499.99, the amount shall be 3% of the manager's net proceeds.

(3) On net proceeds of \$1,500 to \$1,999.99, the amount shall be 4% of the manager's net proceeds.

(4) On net proceeds of \$2,000 to \$5,999.99, the amount shall be \$80 plus 18% of the manager's net proceeds over \$2,000.

(5) On net proceeds of \$6,000 or more, the amount shall be \$800 plus 24% of the manager's net proceeds over \$6,000.

(e) Payment of set-aside fee. The set-aside fee shall be submitted with the manager's monthly statement of facility operations. The manager shall use "BET Monthly Facility Report, BE-117," to report monthly activities. The BET director shall develop and implement procedures for the preparation and submittal of monthly statements.

(f) Adjustments to monthly set-aside fee.

~~[(1) When a "single point of contact" is required under the provisions of §106.1231 of this title, pertaining to establishing and closing facilities, the monthly set-aside payment for the contact manager shall be reduced by 3% for each manager represented.]~~

(1) ~~[(2)]~~ To encourage managers to hire individuals with significant disabilities, managers shall deduct from their set-aside payment up to 50% of the wages or salary paid to a blind or otherwise significantly disabled employee during any month up to an amount not to exceed 5% of the set-aside payment amount for that month. A manager may make this deduction for any number of employees who are individuals who are blind or otherwise significantly disabled so long as that deduction from the set-aside payment amount does not exceed 25% of the total set-aside payment due, or \$1,250.00, whichever is less. The manager shall provide such documentation to the Department of Assistive and Rehabilitative Services/Division for Blind Services as required by the Department of Assistive and Rehabilitative Services/Division for Blind Services to verify such employment and the right to the reduction in set-aside fees. For the purposes of this paragraph, the term "blind or otherwise significantly disabled employee" does not include:

(A) the manager,

(B) a blind or otherwise significantly disabled person within the first degree of consanguinity or affinity to the manager, or

(C) a blind or otherwise significantly disabled person claimed as a dependent, either in whole or in part, on the manager's United States income tax return.

(2) ~~[(3)]~~ Any adjustments provided for in paragraph (1) ~~[paragraphs (1) and (2)]~~ of this subsection shall not apply for any month in which the set-aside fee is not paid in a timely manner.

(3) ~~[(4)]~~ To encourage managers to promptly file their monthly statement of facility operations and pay their monthly set-aside fee, managers shall have their monthly set-aside fee increased by 5% if either their monthly statement or the monthly set-aside fee is not timely received by the Department of Assistive and Rehabilitative Services/Division for Blind Services in accordance with BET procedures for their preparation and submittal. None of the terms of this rule shall ever be construed to create a contract to pay, as consideration for the use, forbearance, or detention of money, interest at a rate in excess of the maximum rate permitted by applicable laws. This adjustment to the set-aside fee is not imposed as interest, but if for any reason whatever this adjustment is considered to be interest, the Department of Assistive and Rehabilitative Services/Division for Blind Services shall refund to the manager any and all amounts as shall be necessary to cause the "interest" paid to produce a rate equal to the maximum rate permitted by applicable laws.

§106.1219. Duties and Responsibilities of Managers.

(a) Managers must comply with applicable law, these rules, written agreements with hosts, the BET Assignment, the requirements of the BET manual, and any proper and authorized instruction by DARS/DBS ~~[Commission]~~ staff.

(b) Managers must comply with procedures prescribed by the Comptroller of Public Accounts for the payment of sales taxes and pro-

vide evidence to the DARS/DBS [Commission] of timely sales tax remittances.

(c) Managers must not engage in conduct that demonstrably jeopardizes the DARS/DBS [Commission's] right, title, and interest in the BET facility, its equipment, or the lease or agreement with the property managers.

(d) Managers must maintain a professional appearance and act in a professional manner while managing a BET facility.

(e) Managers must open a commercial business account in which they maintain sufficient funds to operate the BET facility.

(f) Managers must make payments for insurance provided by the DARS/DBS [Texas Commission for the Blind]. The host shall be added as an insured when required.

(g) Managers must hire sufficient employees to insure the efficient operation of the BET facility and to provide adequate service to customers.

(h) Managers must be actively engaged in the management of a BET facility the number of hours necessary to achieve satisfactory operation of the facility. With prior notice from the DARS/DBS [Commission], managers shall be available for all necessary visits to the facilities for the purpose of advice, consultation, and inspections.

(i) Managers must take appropriate actions to correct deficiencies noted on BET facility audits or reviews within 20 business days.

(j) Managers must provide satisfactory service to the BET facility host and customers.

(k) Managers shall notify the DARS/DBS [Commission] in advance if they intend to be absent from their assigned facility for more than two days.

(l) Managers must provide the DARS/DBS [Commission] with the following information and must notify the DARS/DBS [Commission] of any changes to any item no later than 10 business days after a change occurs:

- (1) the BET facility telephone number;
- (2) an address to which BET correspondence is to be sent;
- (3) a phone number for use in emergencies; and
- (4) the manager's preferred reading format.

(m) Managers are accountable to the DARS/DBS [Commission] for the proceeds of the business.

(n) Managers must keep all records supporting the monthly facility report for a period of three calendar years.

(o) Managers shall report the actual value of resale inventory by taking a physical count in the facility each month and submit a written inventory quarterly (March, June, September, and December) with the monthly facility report.

(p) Managers, upon request by the DARS/DBS [Commission], must make available all records pertinent to the facilities to which they have been assigned for the purpose of audit or review.

§106.1221. Responsibilities of the Department of Assistive and Rehabilitative Services/Division for Blind Services [Commission].

(a) Management services. The DARS/DBS [Commission] shall provide each manager with regular and systematic management services, which shall, at a minimum, include:

(1) explanations of the DARS/DBS [Commission's] rules, procedures, policies, and standards;

(2) recommendations on ways in which the facility may be made more profitable for the manager;

(3) techniques to develop positive relationships with customers, assistants and management of the host organization;

(4) possible solutions to problems recognized by the manager or brought to the manager's attention by DARS/DBS [Commission] staff or the facility host;

(5) continuing education and training courses and opportunities for managers designed to enhance skills, productivity and profitability; and

(6) information about laws, rules, and regulations affecting the operation of a BET facility.

(b) Training. The DARS/DBS [Commission] shall assist the ECM to conduct a special training seminar each year for all licensees to inform them of new BET developments and to provide instruction on new, relevant topics to enhance upward mobility.

(c) Facility operating conditions. The DARS/DBS [Commission] shall establish the conditions for operation of a BET facility in accordance with these rules and any requirements of the host. The operating conditions shall include, among other things, pricing requirements, hours of operation, and menu items or product lines. The DARS/DBS [Commission] may revise the operating conditions from time to time as market conditions warrant. The final authority and ultimate responsibility for determining the prices to be charged for products sold through BET facilities shall rest with the DARS/DBS [Commission].

(d) BET financial data. Upon request, the DARS/DBS [Commission] shall provide licensees with access to BET financial data. Also upon request, the DARS/DBS [Commission] staff shall provide assistance to the licensee in interpreting the data.

(e) Inventory payment. When a manager leaves the manager's initial assignment, the DARS/DBS [Commission] shall pay the manager or the manager's heirs the value of the usable stock and supplies above the amount provided to the manager upon initial assignment.

§106.1223. BET Elected Committee of Managers.

(a) Authority. The Elected Committee of Managers (ECM) is created and shall operate pursuant to Section 107b-1 of the Act.

(b) Relationship to DARS/DBS [Commission]. The ECM shall be presumed as the sole representative of all licensees to the DARS/DBS [Commission] in matters contained in the Act and implementing regulations requiring the active participation of the ECM. Active participation means an ongoing process of good faith negotiations between the Elected Committee of Managers and the DARS/DBS [Commission] in the development of BET policies and procedures prior to implementation. The DARS/DBS [Commission] shall have the ultimate responsibility for the administration and operation of all aspects of BET and has final authority in decisions affecting BET.

(c) Relationship to licensees.

(1) It shall be the sole responsibility of the licensees who elect the members of the ECM to insure that the persons elected represent all licensees.

(2) The ECM shall, in addition to all other matters set forth in these rules or by law or regulation affecting the administration of BET, act as advocates for licensees and shall strive to improve, expand, and make profitable and successful BET to the greatest possible extent for the mutual benefit of the DARS/DBS [Commission] and of the consumers who participate in the program.

(d) BET policies, rules, and procedures. In all matters related to policies and rules, the DARS/DBS [Commission's board] has the ultimate responsibility and the ultimate authority for their establishment and adoption. The ECM shall actively participate in the consideration of significant BET decisions and in deliberations of rules and policies affecting BET. Whenever DARS/DBS or the ECM wishes [a committee of the Commission's board is] to consider policies and/or rules related to BET DARS/DBS [for recommendation to the full board; the board's presiding officer] shall request that the [chairman of the] ECM participate in DARS/DBS rule drafting workshops to be conducted by the BET Director. The BET Director will work with the ECM in a good faith effort to come to agreement in matters related to rule and policy changes. [the committee's discussions and deliberations as an ex officio member. When, in the discretion of the board's presiding officer, one or more additional members of the ECM would enhance the decision-making process by participating in the committee's actions, the ECM chairman shall be requested to appoint one or more other ECM members to participate. In all consideration and deliberations of such board committee any members of the ECM acting as ex officio members shall be entitled to fully participate in all discussions and deliberations to the same extent as are board committee members. ECM members participating in the committee process shall be bound by the rules and procedures by which the committee operates and by the management decisions made by the board committee chairman. The nature of the participation by the ECM members is advisory and no member of the ECM or any person who is not a member of the board may vote on any issue requiring a vote by the committee members.]

(e) BET administrative decisions. In matters concerning the administration of BET, the ultimate responsibility and authority for making administrative decisions affecting BET is that of the DARS/DBS [Commission]. The BET director shall establish and maintain a continuing dialogue and exchange of information with the ECM as to decisions regarding the administration of BET and shall seek ECM input and advice on all decisions affecting the administration of the program. In cooperation with the ECM chairman and such other additional members of the ECM as the ECM chairman [BET director] deems necessary and appropriate, the BET director shall develop and implement methods of establishing and maintaining the dialogue and exchange of information. The methods developed shall be set out in detail in a written format and shall be included in the BET manual.

(f) Exclusions from participation. Neither the ECM nor any member thereof nor any manager is an employee, officer, or official of the State of Texas. Therefore, the ECM shall not participate in any decision-making process regarding personnel of the DARS/DBS [Commission], personnel policies, or personnel administration.

(g) Structure. The ECM shall, to the extent possible, be composed of licensees who are representative of all licensees in BET based on such factors as geography and facility type and size. Two representatives [One representative] shall be elected from each designated ECM district created by the DARS/DBS [Commission] with the active participation of the ECM and as may be revised or modified from time to time.

(h) Qualifications. The ECM shall establish qualifications for candidates, and the procedures for voting, tabulating, and announcing results. The DARS/DBS [Commission] shall provide such advice and counsel as may be requested by the ECM to accomplish all elections of representatives to the ECM.

(i) Term of office. The term of office for ECM members shall be two years beginning on January 1 following the election. Even- and odd-numbered districts shall alternate election years. Any ECM mem-

ber elected to fill a vacancy shall serve the remainder of the unexpired term of the manager who vacated a position.

(j) Meetings. The ECM shall meet once during each calendar year for the purpose of electing officers and again as it may establish by bylaw. It shall be the duty of the ECM chairman to provide to the BET director with a written meeting agenda ten business days in advance of each meeting.

(k) Internal procedures of the ECM. The ECM shall establish bylaws to govern their internal operation and order of business and shall provide the DARS/DBS [Commission] with a copy.

(l) Travel expenses.

(1) Expenses for travel, meals, lodging, or other related expenses incurred by ECM representatives must be preapproved by the DARS/DBS [Commission].

(2) When representing a manager at a full evidentiary hearing, the ECM representative shall be reimbursed for travel, meals, and lodging at the rate allowed for travel by DARS/DBS [Commission] staff.

§106.1225. Termination of License for Reasons Other Than Unsatisfactory Performance.

(a) Causes for termination. The license of a licensee shall be terminated upon the occurrence of any one of the following:

(1) The licensee's visual acuity is improved by any means to the point at which the licensee no longer satisfies the definition of blind.

(2) The licensee becomes otherwise permanently disabled and as a result of such permanent disability is unable to perform the essential functions of operating and maintaining a BET facility. Permanently disabled is a condition that is medically documented and has existed or is expected to exist for at least twelve months. The determination of permanently disabled shall be made by the Assistant Commissioner [executive director] or his designee after review of medical documentation and other information relevant to the issue. Other information relevant to the issue shall include recommendations from DARS/DBS [Commission] staff and the ECM, pertinent information from the licensee's BET file or provided by the licensee, and reports of examinations or evaluations, if any, obtained by the DARS/DBS [Commission] and the licensee.

(3) The licensee is unassigned and has not applied for an assignment for a period of 12 consecutive months.

(b) Examination and evaluation. In any situation in which the vision or other disability of a licensee is at issue with respect to termination of a license, the DARS/DBS [Commission] or the licensee may require an examination or evaluation by professionals to determine whether the licensee is otherwise permanently disabled and as a result of such permanent disability is unable to perform the essential functions of operating and maintaining a BET facility. The reports of such professionals shall be furnished to the DARS/DBS [executive director] and licensee. Any failure of the licensee to participate in required examinations or evaluations shall be grounds for administrative action.

(c) Restoration of license. A license terminated under the provisions of this section may be restored at the discretion of the DARS/DBS [executive director] if the condition or conditions causing the termination have been satisfactorily resolved. In considering a decision whether to restore a license terminated according to this section, the Assistant Commissioner [executive director] shall consult with appropriate BET staff, the ECM chairperson, and any advocate for the licensee and shall consider all pertinent information and/or

documentation provided by any of the persons described in this subsection.

(d) Conditional restoration. If the Assistant Commissioner [~~executive director~~] determines that a license terminated according to this section should be restored, the Assistant Commissioner [~~executive director~~] may condition the restoration of the license on any reasonable matters, such as, by way of illustration, continued medical treatment or therapy, or completion of refresher or other courses of training.

§106.1227. Administrative Action Based on Unsatisfactory Performance.

(a) Causes for administrative action based on unsatisfactory performance. The happening of any one or more of the following acts or omissions by a manager shall subject a manager to administrative action for unsatisfactory performance:

(1) Failing to personally operate the assigned facility as set forth in the permit or contract with the host and/or in the manager's record of assignment unless prior written approval to operate the facility in another manner has been obtained from the DARS/DBS [~~Commission~~].

(2) Failing to pay moneys due from the operation of the facility, including, but not limited to, taxes, fees, or assessments to a governmental entity or supplier, or knowingly giving false or deceptive information to or failing to disclose required information to or misleading in any manner a governmental entity (including the DARS/DBS [~~Commission~~]) or a supplier.

(3) Failing to file required financial and other records with the DARS/DBS [~~Commission~~] or preserve them for the time required by these policies and procedures.

(4) Failing to cooperate in a timely manner with audits conducted by the DARS/DBS [~~Commission~~] or other state or federal agencies.

(5) Failing to maintain insurance coverage required by these policies and procedures.

(6) Using BET equipment or facility premises to operate another business.

(7) Failing to properly maintain facility equipment in a clean and operable condition within the scope of the manager's level of maintenance authorization.

(8) Intentionally abusing, neglecting, using, or removing facility equipment without written DARS/DBS [~~Commission~~] authorization.

(9) Substance abuse while operating a facility; or other abusive use of substances that interferes with the operation of the facility.

(10) Operating a BET facility in a manner that demonstrably jeopardizes the DARS/DBS [~~Commission's~~] investment in the facility.

(11) Using privileged information concerning an existing facility to compete with the DARS/DBS [~~Commission~~] for the facility.

(12) Failing to comply with any federal or state law prohibiting discrimination and failure to assure services without distinction on the basis of race, gender, color, national origin, religion, age, political affiliation, or disability.

(13) Failing to maintain the necessary skills and abilities for effectively managing a facility.

(14) Using a facility to conduct unlawful activities.

(15) Failing to comply with the manager's responsibilities under applicable law, these rules, the requirements of the BET manual, or any proper and authorized instruction by DARS/DBS [~~Commission~~] personnel.

(16) Communicating or causing another person to communicate with a member of a selection panel or an applicant for a facility then being considered for assignment for the purpose of influencing or manipulating the selection of an applicant for the facility being considered for assignment by offering to give, a thing or act of value, including promises of future benefit, or by threat.

~~{(b) Acts of improper contact. The participation in any one or more of the following acts or omissions by a licensee shall result in termination of the licensee's license:}~~

~~{(1) Contacting or communicating with a member of a selection panel or an applicant for a facility then being considered for assignment for the purpose of influencing or manipulating, directly or indirectly, the selection of an applicant for the facility being considered for assignment.}~~

~~{(2) Causing another person to contact or communicate with a member of a selection panel or an applicant for a facility then being considered for assignment for the expressed and stated purpose of influencing or manipulating, directly or indirectly, the selection of an applicant for the facility being considered for assignment.}~~

~~{(3) Giving or offering to give, directly or indirectly, expressly or by implication, a thing of value, tangible or intangible, including promises of future benefit, for the purpose of influencing or manipulating any decision or process of BET.}~~

~~{(4) Causing another person to give or offer to give, directly or indirectly, expressly or by implication, a thing of value, tangible or intangible, including promises of future benefit, for the purpose of influencing or manipulating any decision or process of BET.}~~

~~(b) [(e)] Administrative action pending an appeal. The DARS/DBS [Commission] may at its discretion suspend administrative action pending the outcome of an appeal.~~

~~(c) [(d)] Types of administrative actions. There are five types of administrative actions based on unsatisfactory performance:~~

~~(1) Written reprimand. Written reprimand means a formal statement describing violations of applicable law, these rules, the requirements of the BET manual, or any proper and authorized instruction by DARS/DBS [Commission] personnel.~~

~~(2) Probation. Probation means allowing a licensee to continue in BET in an effort to satisfactorily remedy a condition that is not acceptable under these rules. If the condition causing probation is satisfactorily remedied within the time periods specified in the written notice of probation, the probation will be lifted. If the unacceptable condition is not remedied within the time specified, additional and more serious administrative actions may ensue. When a licensee who has been on probation three times in a three-year period qualifies for probation for the fourth time within said three years, the licensee's license may be revoked according to DARS/DBS [Commission] procedures.~~

~~(3) Loss of facility. Loss of facility means the removal of a manager from the manager's current facility for administrative reasons when the manager's actions or inactions are endangering the state's investment in the facility.~~

~~(4) Termination. Termination means the cessation of a license issued to a licensee to operate a facility and the removal of the individual from BET.~~

~~(5) Emergency Removal of Manager.~~

(A) A manager may be summarily removed from a facility in an emergency. An emergency shall be deemed to exist when, in the reasonable judgment of the DARS/DBS [Commission], the DARS/DBS [Commission], in [with] consultation with the ECM chairman, determines that some act or acts or some failure to act of that manager or any person who is an employee, servant or agent of such manager, will, if such removal does not occur:

(i) result in a clear danger to the health, safety or welfare of any person or to the property of any person in, on or around the facility; or

(ii) result in a deterioration of the existing or future relationship with the host, thereby putting the continuation of the facility in jeopardy; or

(iii) present a clear potential of substantial loss or damage to the property of the State of Texas.

(B) In any case in which a manager has been summarily removed from a facility on an emergency basis for any of the reasons set forth in subparagraph (A) of this subsection, the manager shall be entitled to have a hearing as to the issue of a necessity of the summary removal within ten days after the removal has occurred.

(C) The time period for such hearing may be extended only by mutual agreement of the manager and the DARS/DBS [Commission], provided that if an official holiday of the State of Texas falls within the time period then the period shall be extended by the time of such holiday; or if the services of an arbitrator cannot be obtained in time to afford the hearing within the time period, then the time period shall be extended by the time necessary to obtain the services of such arbitrator and schedule the hearing.

(D) If the manager desires to have such a hearing, the manager shall notify the DARS/DBS [Commission] in writing within 48 hours following the removal. Such written notification need only state the name of the manager, the location of the facility, and that the manager desires to have a hearing as to the issue of the need for summary removal. The request may be delivered to the BET director, the Assistant Commissioner [executive director], or any local DARS/DBS [Commission] BET staff member in the geographical area in which the facility is located.

(E) Upon receipt of any such request the BET director shall obtain the services of an arbitrator from the American Arbitration Association ("AAA") or other similar organization to conduct the hearing.

(F) The manager shall be notified of the date, time and place of the hearing. To the extent possible, the hearing shall be conducted in an area near the location of the facility.

(G) The hearing shall be conducted in accordance with the rules of the American Arbitration Association, except that the arbitrator shall be requested to announce orally a decision at the conclusion of the hearing.

(H) If the arbitrator determines that no emergency necessitating the removal of the manager existed, then the manager shall be forthwith restored to the operation of the facility.

(I) No determination made as a result of the hearing shall operate to prejudice the rights of the manager to proceed with a grievance in accordance with the terms of these rules and the Randolph-Sheppard Act.

(d) [({e})] Administrative action procedures.

(1) The DARS/DBS [Commission] shall make the decision as to what administrative action to take based upon the seriousness of

the violation, the damage to BET, and the licensee's record. [The foregoing language notwithstanding, when the act or omission alleged to be a matter requiring administrative action is one or more of those described in subsection (b) of this section, the only administrative action available shall be termination of the license.]

(2) Upon receipt of information which indicates that administrative action may be appropriate, the DARS/DBS [Commission] shall take the following actions prior to making a determination as to taking administrative action:

(A) The DARS/DBS [Commission] shall notify the licensee in writing of the allegations and reasons that administrative action is being considered. The notice shall either be hand delivered and read to the licensee, or it shall be delivered to the licensee's work or home address.

(B) The licensee shall have 5 business days to respond, either in person or in writing, to the notice. The response shall be made to the individual designated in the notice. After receiving the licensee's response, the DARS/DBS [Commission] shall decide what administrative action, if any, is appropriate. If no response is timely received from the manager, the DARS/DBS [Commission] shall decide what administrative action, if any, is to be taken without the licensee's response.

(C) If a decision is made to issue a written reprimand, the written reprimand will be accompanied by a brief summary of the evidence justifying the reprimand, suggested steps for correcting the violation, and consequences of not correcting the violation. All reprimands shall contain notice of the licensee's right to appeal the reprimand and a statement that failure to correct the violation may result in further administrative action.

(D) If a decision is made to place a licensee on probation, the DARS/DBS [Commission] shall deliver to the licensee a letter of probation containing the following:

(i) the specific reasons for probation;

(ii) the remedial action required to remove the licensee from probation;

(iii) the time within which said remedial action must take place;

(iv) the consequences of failure to take remedial action within the prescribed time frame; and

(v) notice of the licensee's right to appeal.

(E) Upon satisfactory completion of the remedial action outlined in the letter of probation, a licensee shall be removed from probation.

(F) Failure of the licensee to complete remedial requirements within the prescribed time frame shall result in one or more of the following actions:

(i) required training;

(ii) extension of probation;

(iii) restrictions on applying for another facility;

(iv) removal from the facility;

(v) termination of license.

(G) If, after the manager has had an opportunity to respond, a decision is made that sufficient grounds exist to remove the manager from a facility, the DARS/DBS [Commission] shall notify the manager in writing by hand delivery or certified U.S. Mail, return re-

ceipt requested, that the manager's assignment to the BET facility has been terminated and the manager must vacate the facility. The removal letter shall contain the following information:

- (i) specific reasons for removal from the facility;
- (ii) actions required by the manager, if any;
- (iii) requirements for obtaining reassignment; and
- (iv) notice of the manager's right to appeal.

(H) If, after the licensee has had an opportunity to respond, a decision is made that sufficient grounds exist for termination, the DARS/DBS [Commission] shall notify the manager in writing by hand delivery or certified U.S. Mail, return receipt requested, that the DARS/DBS [Commission] has decided that sufficient cause exists to terminate the licensee's license. The manager shall be instructed to vacate the facility if the licensee has not already done so. The termination letter shall contain the following information:

- (i) specific reasons for termination;
- (ii) actions required by the licensee, if any;
- (iii) procedures for applying for any other DARS/DBS [Commission] services for which the person may be eligible; and
- (iv) notice of the licensee's rights under the Randolph-Sheppard Act.

(3) The provisions of paragraph (2) of this subsection notwithstanding, pending a determination with respect to administrative action, a manager may be removed from a facility if the DARS/DBS [Commission] considers such removal in the best interest of BET and efforts to correct the deficiencies have been unsuccessful.

(4) During the license termination process, the manager shall not be eligible for assignment to any other BET facility.

(e) [(f)] Prior to termination of a license, the DARS/DBS [Commission] shall afford the licensee an opportunity for a full evidentiary hearing.

\$106.1229. Procedures for Resolution of Manager's [Licensee's] Dissatisfaction.

(a) Appealable actions. These rules provide the procedures for licensees who are dissatisfied with a DARS/DBS [Commission] action arising from the operation of BET.

(b) Actions not subject to appeal. The phrase "DARS/DBS [Commission] action arising from the operation of BET" in subsection (a) of this section does not include the following actions of the DARS/DBS [Commission]:

- (1) the hiring, firing or discipline of DARS/DBS [Commission] employees;
- (2) the challenge of federal or state law, or rules previously approved by the Secretary of Education pursuant to the Randolph-Sheppard Act; or
- (3) an action by the DARS/DBS [Commission] unless it is alleged that the action is in violation of applicable law, these rules, the requirements of the BET manual, any proper and authorized instruction by DARS/DBS [Commission] personnel, or is unreasonable. Unreasonable shall mean without rational basis or arbitrary and capricious.

(c) DARS/DBS [Commission] discretion and sovereign immunity. The DARS/DBS [Commission] does not waive its right and duty to exercise its lawful and proper discretion. The DARS/DBS [Commission] does not waive its sovereign immunity.

(d) Remedies. Remedies available to resolve dissatisfaction shall correct the action complained of from the earlier time of:

- (1) agreement by the parties as to an appropriate remedy, or
- (2) a final resolution pursuant to the Randolph-Sheppard Act that the DARS/DBS [Commission] acted in violation of applicable law, these rules, the requirements of the BET manual, any proper and authorized instruction by DARS/DBS [Commission] personnel, or acted unreasonably.

(e) Informal procedures to review dissatisfactions. At the request of a licensee, the DARS/DBS [Commission] shall arrange for and participate in informal meetings in an effort to quickly resolve a matter of dissatisfaction arising from the operation or administration of BET. The informal process is for the purpose of quickly and amicably resolving an issue in controversy. It is not for the purpose of denying or delaying the manager's right to pursue resolution of a matter through a full evidentiary hearing. At any point during the informal process, either party may elect to terminate the following procedures:

(1) A licensee may initiate informal procedures by notifying the DARS/DBS [Commission] in writing through the BET Director that the licensee is dissatisfied with a matter arising from the operation or administration of BET. The written notice must describe with reasonable particularity the specific matter in controversy, the date the action occurred, or an approximate date if the exact date is not known, and the licensee's desired relief or remedy. If the licensee is dissatisfied with a series of the same or related actions over a period of time, the notice should describe to the best of the licensee's ability the timeframe of the events and include the date of the most recent event about which the licensee is dissatisfied.

(2) To ensure that informal resolution is possible in a timely manner, the licensee's request to initiate informal proceedings must be filed with the DARS/DBS [Commission] no later than six months after the most recent event specified in the request. DARS/DBS [The Commission] shall within a reasonable time arrange a meeting at a location, date, and time satisfactory to all parties.

(3) The licensee must notify the DARS/DBS [Commission] when filing a request for informal proceedings if the licensee will be represented by counsel during mediation. The DARS/DBS [Commission] will be represented by counsel only when the licensee is represented by counsel.

(4) Meetings shall take place in an informal environment and shall be attended by the licensee, a BET staff person, and a neutral third party who shall serve as an informal mediator during the discussions.

(5) The neutral third party shall be a person certified in conducting mediations.

(6) The neutral third party's responsibility is to report to the DARS/DBS [executive director] only that the effort to resolve the matter to the licensee's satisfaction was or was not successful. If an agreement is reached, then the actions agreed to with respect to the facility or licensee shall be forthwith taken.

(f) Full evidentiary hearing. A manager has the right to request a full evidentiary hearing to resolve a dissatisfaction according to the following:

(1) A manager has the right to request a full evidentiary hearing without first going through mediated meetings described in subsection (e) of this section.

(2) A request for an evidentiary hearing must be made no later than the 20th business day after the occurrence of the agency action about which the manager complains. The Assistant Commissioner [executive director], upon request of the complaining party, may extend the time period for filing a grievance upon the showing of good cause by the complaining party for such additional period if such request is made no later than the 20th business day after the occurrence of the agency action about which the manager complains.

(3) A manager requesting a full evidentiary hearing after the conduct of mediated meetings described in subsection (e) of this section must request such hearing in writing no later than the 20th business day after receipt of the Assistant Commissioner's [executive director's] decision.

(4) A request for a full evidentiary hearing must be in writing and transmitted to the Assistant Commissioner [executive director]. A request that is postmarked within the applicable time frame shall be considered timely delivered if properly posted.

(5) The request for a full evidentiary hearing must describe the specific action with reasonable particularity sufficient to provide notice as to the action which is alleged to be unreasonable or in violation of applicable law, these rules, the requirements of the BET manual, or any proper and authorized instruction by DARS/DBS [Commission] personnel. The request must, to the best of the complainant's knowledge, contain the date the action occurred and the law or regulation must be reasonably identified if an action is alleged to be in violation of law, these rules, the requirements of the BET manual, or regulation. The request must also identify the desired relief or remedy.

(6) The manager may be represented in the evidentiary hearing by legal counsel or other representative of the manager's choice, at the manager's expense.

(7) Reader or other communication services, if needed, shall be arranged for the manager by the DARS/DBS [Commission] upon request by the manager at least three business days prior to the hearing date.

(8) The manager shall be notified in writing of the time and place fixed for the hearing and of the manager's right to be represented by legal or other counsel.

(9) The presiding officer at the hearing shall be an impartial and qualified official who has no involvement either with the DARS/DBS [Commission] action which is at issue or with the administration or operation of BET.

(10) Hearings shall be conducted in accordance with the Randolph-Sheppard Act, these rules, and the State Office of Administrative Hearings (SOAH) procedures for hearing contested case hearings contained in 1 TAC §105.1 et seq. to the extent those procedures do not conflict with the Act and its implementing regulations or these rules.

(11) Licensees bringing complaints shall have the burden of proving their cases by the preponderance of evidence. Licensees shall present their evidence first. When a hearing is requested as a result of administrative action by the DARS/DBS [Commission] against a licensee, the DARS/DBS [Commission] shall have the burden of proving its case by a preponderance of the evidence and shall present its evidence first.

(12) A record shall be made of the evidence and shall be made available to the parties by the DARS/DBS [Commission] no later than the 30th business day after the close of the hearing.

(13) The hearing officer shall issue a recommendation which shall set forth the principal issues and relevant facts adduced at

the hearing and the applicable provisions of law, rule, the requirements of the BET manual, or any proper and authorized instruction by DARS/DBS [Commission] personnel. The recommendation shall contain findings of fact and conclusions with respect to each of the issues, and the reasons and bases for the conclusions.

(14) In formulating a recommendation, the hearing officer shall not evaluate whether the DARS/DBS [Commission's] actions were wise, efficient, or effective. Rather, the hearing officer is limited to determining whether the DARS/DBS [Commission's] actions were unreasonable, or violated applicable law, these rules, the requirements of the BET manual, or any proper and authorized instruction by DARS/DBS [Commission] personnel.

(15) Should the hearing officer find that the actions taken by the DARS/DBS [Commission] were unreasonable, or violated applicable law, these rules, the requirements of the BET manual, or any proper and authorized instruction by DARS/DBS [Commission] personnel, the hearing officer shall also recommend any prospective action necessary to correct the violations.

(16) The hearing officer's recommendation shall be made no later than the 30th business day after the receipt of the official transcript. The recommendation shall be delivered promptly to the Assistant Commissioner [executive director].

(17) The Assistant Commissioner [executive director] shall review the recommendation of the hearing officer and forward a decision to the manager no later than the 20th business day after receipt of the hearing officer's recommendation.

(g) Arbitration. A manager appealing the DARS/DBS [Commission's] decision must file a complaint with the Secretary of Education in conformity with the provisions of the implementing regulations at 34 CFR, part [See:] 395.13 of the Act, pertaining to arbitration of vendor complaints.

§106.1231. Establishing and Closing Facilities.

(a) Establishing facilities.

[(H)] On its own initiative, at the request of an agency that controls federal or state property, or at the request of a private organization, the DARS/DBS [Commission] shall survey the property, blueprints, or other available information concerning the property to determine whether the installation of a BET facility is feasible and consonant with applicable laws and regulations and with the DARS/DBS [Commission's] vocational rehabilitation objectives.

(1) [(A)] If the installation of a BET facility is determined to be feasible, the DARS/DBS [Commission] shall proceed to develop plans for the establishment of a facility in accordance with procedures promulgated and implemented by the DARS/DBS [Commission] staff and, when the facility is developed, shall assign a manager to the facility.

(2) If it is determined that a blind person could not properly operate a vending facility at a particular location, the pertinent facility data will be presented to the Commissioner of the Department of Assistive and Rehabilitative Services to determine if a person whose disability is not of a visual nature could operate the facility in a proper manner. The phrase "could not properly operate a vending facility" includes but is not limited to the existence, at the time of the establishment of the facility, of laws or regulations that restrict the blind from operating a particular vending facility as defined under state and federal laws.

[(B) If the Commission determines that the location being considered for a BET facility is not appropriate for use in the program or that the creation of the facility is not feasible and the location being considered is on state property, then the following shall occur:]

{(i)} The BET director shall, no later than the 40th business day after the date the location was brought to the attention of the Commission or the Commission became aware of its possible use as a BET facility, certify to the executive director that the location being considered is not appropriate for BET use or that it is not feasible to establish a BET facility at the location.}

{(ii)} The location shall be made available to the Texas Rehabilitation Commission in accordance with state law.}

{(2)} The procedures set forth in this section shall apply whether the consideration of a location is an initial or a subsequent review.}

{(b)} Maximizing employment opportunities. }

{(1)} On the effective date of this section, the Commission shall hereafter maximize the number of employment opportunities for persons who are blind by applying the procedures set forth in this subsection. This subsection shall not affect the current assignment of any manager at the time this section becomes effective.}

{(2)} Upon the opening of a new location or upon needing to advertise and assign a manager to an existing facility, the Commission shall determine whether the opportunity exists to increase the number of employment opportunities for persons who are blind. The Commission shall increase the number of employment opportunities in a location when all of the following circumstances exist:}

{(A)} The location must be physically suited to support the operation of two or more BET facilities, such as, by way of illustration and not by way of definition or limitation:}

{(i)} a single building in which two or more clearly separate and distinct facilities can be located in two or more separate areas of the building;}

{(ii)} a location comprised of a complex of buildings, each of which can support one or more BET facilities; or}

{(iii)} a location that includes two or more clearly separate and distinct sites that can support different operations, such as two or more dining areas; a dining area and a site for vending machines; a cafeteria and one or more other types of BET facilities; or any combination of the foregoing.}

{(B)} The creation of two or more facilities from one location must provide from at least one of the facilities before set-aside fees an income equal to or greater than 600% of the state median income of all managers for the preceding year.}

{(C)} Once the requirement in subparagraph (B) is satisfied, if any additional facility is not projected to provide before set-aside fee an income of at least 200% of the state median income of all managers for the preceding year, such site shall be assigned by the Commission as a satellite location. Once the satellite location produces net proceeds in excess of 200% of the state median income per year before set aside fees, it shall be advertised for assignment as a full-time employment opportunity pursuant to these rules.}

{(D)} Once the requirement in subparagraph (B) is satisfied, if at least one additional facility is projected to provide before set-aside fee an income of at least 200% of the state median income of all managers for the preceding year, then the Commission shall advertise such facility or facilities pursuant to these rules.}

{(E)} There is no circumstance beyond the control of the Commission which precludes assignment of more than one manager to the same location.}

{(F)} Under no circumstances shall more than one manager be assigned to a clearly separate and distinct site regardless of income produced or any other factors. Additionally, under no circumstances shall a site be divided into separate facilities by any means other than by actual physical separation.}

{(G)} In those situations in which multiple managers are assigned to a single location and the host of the location requires a single point of contact, the Commission shall designate from among the managers assigned to the location a directing manager to serve as the single point of contact. The directing manager shall be compensated for these services in accordance with policies for paying set-aside fees.}

(b) {(e)} Closing facilities.

{(4)} Except for temporary closings by DARS/DBS [Commission] staff, no BET facility shall be closed by the DARS/DBS [Commission] until each of the following has occurred:

(1) {(A)} The BET director has certified to the Assistant Commissioner [executive director] that the facility is no longer a feasible or viable BET facility and provides reasons for that opinion.

(2) {(B)} The Assistant Commissioner [executive director] has approved the proposed closing of the facility.

{(C)} The facility has been made available to the Texas Rehabilitation Commission for operation of a facility by a person disabled by conditions other than blindness if the location is on state property, and the Texas Rehabilitation Commission has declined the facility.}

{(2)} All facility closings shall be reported to the Commission's board at the regular meeting of the board next following such closing with the reasons for the closing.}

§106.1233. Forms.

The DARS/DBS [Commission] adopts the following forms by reference. Copies are available from any local DARS/DBS [Commission] office or by calling the agency's toll-free line (1-800-252-5204) and requesting a copy.

(1) BET Application (BE-114) dated October 1, 2006 [September 1, 2003].

(2) Business Enterprises of Texas Monthly Facility Report, (BE-117), dated October 1, 2006 [September 1, 2003].

(3) BET Assignment - Requirements for Operation of a Vending Facility Under Randolph-Sheppard Act and Applicable State Statutes Between DARS/DBS [Texas Commission for the Blind] and a Licensed Vendor (BE-121), dated October 1, 2006 [September 1, 2003].

(4) Equipment Loan Agreement (BE-122) dated October 1, 2006 [September 1, 2003].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER I. BLIND CHILDREN'S
VOCATIONAL DISCOVERY AND
DEVELOPMENT PROGRAM
DIVISION 1. GENERAL INFORMATION

**40 TAC §§106.1401, 106.1403, 106.1405, 106.1407,
106.1409, 106.1411, 106.1413**

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1401. Purpose and Legal Authority.

The Blind Children's Vocational Discovery and Development Program is established to implement Human Resources Code, Chapter 91, §91.028 (relating to Services for Visually Handicapped Children). The Division [Commission] is authorized to provide children who are blind and children who have visual impairments with services to supplement the services provided by other state agencies when the Division [Commission] determines that the provision of the services is appropriate and that the services will assist the children in achieving financial self-sufficiency and a fuller and richer life.

§106.1403. Public Access to Information, Forms and Documents.

Requests for access to or copies of information maintained by the Division [Commission] in the administration of this chapter are handled according to §106.1411 [§169.6] of this chapter pertaining to confidentiality of records, and §101.3681 [§159.40], et seq. of this title pertaining to requests for public information.

§106.1405. Remedy of Dissatisfaction.

The agency's appeal process in Chapter 106, Subchapter A, Division 2 [Subchapter B of Chapter 464] of this title (relating to Blind Children's Vocational Discovery and Development Program Appeals and Hearing Procedures) shall be available to parents who wish to contest a determination made concerning eligibility for services, the denial and furnishing of services, and the termination of services.

§106.1407. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. The use of the singular or plural case is not meant to be limiting unless the context clearly indicates otherwise.

(1) Blind--Best corrected visual acuity of 20/200 or less in the better eye, or a visual loss that results in a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees, which means a field of no greater than 20 degrees in the better eye.

(2) BCVDD Program--Blind Children's Vocational Discovery and Development Program.

(3) BCVDD Specialist--An employee of the Division [Commission] designated to provide BCVDD Program services.

(4) Division [Commission]--The Division for Blind Services [Texas Commission for the Blind].

(5) Comparable services and benefits--Any service, benefit, or resource available to a child from another public or private source

that provides in whole or in part the services that the child would otherwise receive from the Division [Commission].

(6) Developmental services--Services that increase the capabilities and functional abilities of a child in a noneducational setting.

(7) Educational support services--Services that assist a child in gaining the maximum benefit from educational services provided by others.

(8) Federal poverty level--The amount of income, depending on family size, that the United States Division of Health and Human Services determines to be the level of income below which a family is classified as being in poverty.

(9) Habilitation services--Services that develop a severely visually impaired child's skills for independent living and potential employment.

(10) Nonsevere visual loss--A visual acuity such that one eye meets the definition of blind or severe visual loss and the acuity in the other eye with best correction is better than 20/70, or a visual acuity in both eyes with best correction of better than 20/70.

(11) Parent--The child's natural or adoptive parent; or the spouse of the child's natural or adoptive parent; or the child's guardian, surrogate parent; or the spouse of the guardian or surrogate parent; or a person or spouse of the person who is acting as the child's parent.

(12) Referral--A child who has been referred to the BCVDD Program for services but for whom an application has not been completed.

(13) Restoration services--Services to eliminate or reduce limitations imposed by a visual impairment on the functioning of a child and cosmetic services necessary to improve the physical appearance of the child's eyes when the eyes are abnormal to the extent that they negatively impact the child's social and emotional well-being.

(14) Severe visual loss--A loss of vision such that the best corrected visual acuity is between 20/70 and 20/200 in the better eye; or a visual loss such that the visual field is 30 degrees or less but greater than 20 degrees with best correction.

(15) Severely visually impaired child--A child with a visual impairment that has resulted in a permanent condition of blindness or severe visual loss; or a child who has been certified as blind or severely visually impaired by a local education agency; or a child who has been determined to be functioning as a person who is blind or who has a severe visual loss.

(16) Technology services--Services to provide a child access to an item, piece of equipment, or product system that maintains or improves the child's communication, independent living, social, or prevocational skills.

(17) Visual impairment--An injury, disease, or other disorder that reduces, or if not treated will probably result in reducing, visual functioning; or a visual condition requiring cosmetic treatment, psychological assistance, counseling, or other assistance that the Division [Commission] can render.

§106.1409. Comparable Services and Benefits.

(a) The Division [Commission] shall consider comparable services and benefits prior to expending Division [Commission] funds for all BCVDD Program services.

(b) The child's parent shall be required to apply for assistance from any resource identified by the Division [Commission] that may be a resource for comparable services and benefits.

(c) The child's parent must provide acceptable evidence of eligibility or ineligibility for such comparable services and benefits to the Division ~~[Commission]~~ within 90 days from application or additional expenditures may be suspended.

(d) Whenever possible and practical, the child's parent's choice of health professionals and appropriate facilities is honored, as long as such professionals and facilities are willing to accept reimbursement in accordance with §101.3611 ~~[§459.6]~~ of this title, pertaining to rates for medical services.

(e) The Division ~~[Commission]~~ shall verify a child's eligibility for Medicaid at the time of application if the parent's income falls at or below 185% of the federal poverty level as determined under the provisions of subchapter D of this chapter relating to Economic Resources.

§106.1411. Confidentiality of Records.

(a) All personal information furnished to and gathered by the Division ~~[Commission]~~ in the administration of this chapter, including names, addresses, records of agency evaluations, reports of medical examinations and treatments, financial information, and photographs, shall be confidential in accordance with these rules.

(b) Personal information shall not be disclosed directly or indirectly outside the Division ~~[Commission]~~ unless the parent's consent has been obtained in writing, or unless the disclosure or release of personal information:

- (1) is required by federal or state law;
- (2) is required in response to investigations in connection with law enforcement, fraud or abuse, and in response to the order of a court of appropriate jurisdiction; or
- (3) is required in order to protect the individual or others when the individual poses a threat to his or her own safety or the safety of others.

(c) Information containing identifiable personal information shall not be shared with advisory or other bodies that do not have official responsibility for administration of the program.

(d) Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the blind and visually impaired children's program, or for purposes that would significantly improve the quality of life for children with visual impairments and only if the organization, agency, or individual assures that:

- (1) the information will be used only for the purposes for which it is being provided;
- (2) the information will be released only to persons officially connected with the audit, evaluation, or research;
- (3) the information will not be released to the involved consumer and/or parent;
- (4) the information will be managed in a manner to safeguard confidentiality; and
- (5) the final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

(e) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

§106.1413. Service Delivery.

(a) Oversight and monitoring of service delivery. Service delivery shall be monitored by trained personnel through the use of onsite visits and standard case review checklists. The checklist shall contain sufficient information to evaluate case documentation, timely service delivery, and client progress towards goals.

(b) Guidance to service delivery staff. Service delivery staff shall be provided with written guidelines and training on developing consumer service plans, measuring and documenting consumer progress toward an expected outcome, and the timely authorization of services. The guidelines shall include, but are not limited to, the following:

(1) Procedures for providing information to applicants and consumers that aid in making an informed choice about the selection of a habilitation outcome, the specific services needed to achieve the outcome, the entity that will provide the services, and the settings in which the services will be provided;

(2) Procedures for monitoring and documenting consumer progress in completing services that are included in the consumer's service plan. Said procedures shall include reasonable time frames in which the provision of services are expected to be completed or initiated, provided that the time periods are not so short as to effectively deny an individual a necessary service, not absolute, and permit exceptions so that individual needs can be addressed. The duration of each service needed by an individual must be determined on an individual basis.

(c) Reasonable Timeframes for Service Delivery. The following timeframes shall serve as benchmarks to service delivery staff and monitoring staff in evaluating a consumer's progress towards the expected outcome in the service plan.

(1) An assessment to determine eligibility will normally be completed within 60 days, unless exceptional and unforeseen circumstances beyond the control of the Division ~~[commission]~~ precludes a determination.

~~[(2) Vision screening services will normally be completed within 90 days.]~~

~~[(3) Restoration services will normally be completed within 12 months.]~~

~~[(2) [(4)]~~ Habilitation services for a permanently severely visually impaired child:

(A) A habilitation plan will normally be developed within 90 ~~[30]~~ days after an eligibility determination.

(B) The child will normally complete all planned habilitation services within 60 months.

~~[(C) Eye treatment services, if part of the plan, will normally be completed within 24 months.]~~

~~[(C) [(D)]~~ Applicable referrals to Early Childhood Intervention Program will be completed within two working days.

~~[(D) [(E)]~~ Applicable referrals for educational placement will be completed within 30 days.

~~[(E) [(F)]~~ Progress on other services, such as developmental, independent living, social and emotional development, prevocational, and communication services, will be documented at least annually.

~~[(F) [(G)]~~ Post-outcome services will normally be completed within 6 months.

(d) Financial planning information. Quarterly budget information shall be provided to agency field ~~[regional]~~ directors. Field ~~[Regional]~~ directors will disseminate this information to all caseload carrying staff for financial planning purposes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. BASIC PROGRAM REQUIREMENTS

40 TAC §§106.1421, 106.1423, 106.1425, 106.1427, 106.1429, 106.1433

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1421. Referral and Application.

(a) A child may be referred to the BCVDD Program by letter, telephone, direct contact, or by another means by providing a name and address to any Division ~~[Commission]~~ office.

(b) A child may be referred by the Division ~~[Commission]~~ to another Division ~~[Commission]~~ program if necessary to better meet the child's needs.

(c) A child is considered an applicant for BCVDD Program services on the day the Division ~~[Commission]~~ receives a properly completed application form signed by the child's parent.

§106.1423. Eligibility.

(a) To be eligible to receive services under this chapter, an applicant must:

- (1) have a visual impairment;
- (2) reside in Texas; and
- (3) be 18 years of age or younger.

(b) A person over the age of 18 and under the age of 22 who meets the criteria in subsection (a)(1) and (2) of this section and who is enrolled in a secondary school may receive services under this chapter if the Division ~~[Commission]~~ determines that children's services are appropriate for the individual. The term "child" as used in this chapter shall encompass persons included in this subsection.

(c) Eligibility requirements shall be applied without regard to the age, gender, race, color, creed, or national origin of the applicant.

(d) Expenditure of funds and provision of services may be restricted by other criteria in these rules.

§106.1425. Prior Authorization of Services.

The Division ~~[Commission]~~ shall not pay for any service not authorized in advance by the Division ~~[Commission]~~.

§106.1427. Family Service Plan.

(a) The Division ~~[Commission]~~ shall develop a family service plan jointly with the child's parent when it has been determined that the child needs habilitation services.

(b) The family service plan shall contain a description of the child's planned services, agreements between the parent and the Division ~~[Commission]~~, and other information necessary to administer the provisions of this chapter.

§106.1429. Case Closures.

(a) The Division ~~[Commission]~~ shall close a child's case when the child's plan of services has been completed, or sooner if:

- (1) the child has moved out of the state;
- (2) the child cannot be located;
- (3) the child has died; or
- (4) the parent refuses to cooperate with the Division ~~[Commission]~~.

(b) The Division ~~[Commission]~~ shall inform the child's parent of the Division's ~~[Commission's]~~ intent to close the child's case ~~[no fewer than 30 days in advance]~~ by sending a letter to the parent's last known address. No notice shall be sent if the case is being closed due to the death of the child.

§106.1433. Reports of Suspected Neglect or Abuse.

In compliance with state laws governing such reports, the Division ~~[Commission]~~ shall report instances in which the agency suspects a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. SERVICES

40 TAC §§106.1445, 106.1447, 106.1449, 106.1451, 106.1453, 106.1455, 106.1457, 106.1461, 106.1463

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1445. Assessment Services.

(a) The Division ~~[Commission]~~ may provide medical and diagnostic assessments jointly agreed to by the BCVDD specialist and parent that are necessary to determine the eligibility of a child and to initiate a service plan upon a finding of eligibility.

(b) Services in this section, with the exception of purchasing copies of existing records, are subject to application of Division 4 ~~[Subchapter D of this chapter]~~ (relating to Economic Resources) and Division 5 ~~[Subchapter E of this chapter]~~ (relating to Order of Selection for ~~[Payment of]~~ Services).

§106.1447. Physical Examinations and Other Medical Specialty Examinations.

(a) The Division ~~[Commission]~~ may provide physical examinations and other necessary medical specialty examinations jointly agreed to by the BCVDD specialist and parent when the BCVDD specialist determines that the examination is necessary for the child to participate in planned services.

(b) Services in this section are subject to application of Division 4 of this subchapter ~~[Subchapter D of this chapter]~~ (relating to Economic Resources), with the exception of purchasing copies of existing records; Division 5 of this subchapter ~~[Subchapter E of this chapter]~~ (relating to Order of Selection for Payment of Services); and Division 6 of this subchapter ~~[Subchapter F of this chapter]~~ (relating to Case Management Reimbursement Charges).

§106.1449. Other Diagnostic Evaluations.

(a) Diagnostic evaluations of a nonmedical nature that are necessary to plan developmental services may be provided by the Division ~~[Commission]~~ only for children receiving habilitation services and jointly agreed to by the BCVDD specialist and parent.

(b) Services included in this section are subject to application of Division 4 of this subchapter ~~[Subchapter D of this chapter]~~ (relating to Economic Resources), with the exception of purchasing copies of existing records; Division 5 of this subchapter ~~[Subchapter E of this chapter]~~ (relating to Order of Selection for Payment of Services); and Division 6 of this subchapter ~~[Subchapter F of this chapter]~~ (relating to Case Management Reimbursement Charges).

§106.1451. Restoration Services.

(a) Restoration services do not include routine eye exams, treatments such as drops for glaucoma and conjunctivitis, or glasses or contact lenses for children whose only eye problem is a refractive error in which the uncorrected visual acuity is better than 20/70 in both eyes.

(b) Restoration services must be recommended in writing by an ophthalmologist, optometrist, ocularist, or orthoptist and jointly agreed to by the BCVDD specialist and parent.

(c) Only one pair of replacement glasses or contact lenses may be purchased in a 12-month period for a child receiving restoration services unless there is a .5 or greater diopter change in either prescribed lens.

(d) Restoration services are subject to application of Division 4 of this subchapter ~~[Subchapter D of this chapter]~~ (relating to Economic Resources), Division 5 of this subchapter ~~[Subchapter E of this chapter]~~ (relating to Order of Selection for Payment of Services), and Division 6 of this subchapter ~~[Subchapter F of this chapter]~~ (relating to Case Management Reimbursement Charges).

§106.1453. Travel Services.

(a) Travel services, including lodging, food, and transportation for a child and parent, may be provided when travel is necessary to participate in other services covered under this subchapter ~~[except vision screening services]~~.

(b) Travel services available to the child and parent without cost to the Division ~~[Commission]~~ shall be used first.

(c) Travel services shall be reimbursed at a rate no more than the rate authorized for state employees traveling on official business. In the event commercial transportation is used for the purposes allowed under this chapter, services shall be limited to the expenses of the child and one travel companion.

(d) To receive reimbursement for travel expenses, a parent is required to submit receipts and information requested by the BCVDD specialist.

(e) Travel services are subject to application of Division 4 of this subchapter ~~[Subchapter D of this chapter]~~ (relating to Economic Resources), Division 5 of this subchapter ~~[Subchapter E of this chapter]~~ (relating to Order of Selection for Payment of Services), and Division 6 of this subchapter ~~[Subchapter F of this chapter]~~ (relating to Case Management Reimbursement Charges).

§106.1455. Habilitation Services.

(a) The following habilitation services may be provided by the Division ~~[Commission]~~ only for children who meet the definition of severely visually impaired child or their families:

- (1) developmental services;
- (2) psychological counseling for the child and the child's family members who reside in the same household with the child;
- (3) technology services;
- (4) educational support services;
- (5) independent living skills services provided through agency staff to the child and to other individuals who are involved in the child's development of independent living skills; and
- (6) braille instruction for family members of children receiving habilitation services.

(b) The provisions of Division 4 of this subchapter ~~[Subchapter D of this chapter]~~ (relating to Economic Resources), Division 5 of this subchapter ~~[Subchapter E of this chapter]~~ (relating to Order of Selection for Payment of Services), and Division 6 of this subchapter ~~[Subchapter F of this chapter]~~ (relating to Case Management Reimbursement Charges) are applied to developmental services, psychological counseling services, and technology services.

(c) The provisions of Division 6 of this subchapter ~~[Subchapter F of this chapter]~~ (relating to Case Management Reimbursement Charges) are applied to independent living skills services and braille instruction.

§106.1457. Counseling, Guidance, and Follow-up Services.

(a) Counseling, guidance, and follow-up services by BCVDD specialists are available to all eligible children.

(b) Services covered under this section are subject to Division 6 of this subchapter ~~[Subchapter F of this chapter]~~ (relating to Case Management Reimbursement Charges).

§106.1461. Child Care Services.

(a) Child care services may be provided only to parents of children receiving habilitation services.

(b) Child care services may be provided only to allow family members to participate in services that will result in a substantial contribution to the child's ability to benefit from habilitation services.

(c) It is the parent's responsibility to:

- (1) specify the level of child care necessary;

(2) select an appropriate provider and make arrangements for the provision of care;

(3) pay the child care provider; and

(4) in order to receive reimbursement provide the Division ~~[Commission]~~ with a signed receipt in a format acceptable to the Division ~~[Commission]~~ when child care services are completed.

(d) Services in this section are subject to Division 4 of this subchapter ~~[Subchapter D of this chapter]~~ (relating to Economic Resources), Division 5 of this subchapter ~~[Subchapter E of this chapter]~~ (relating to Order of Selection for Payment of Services), and Division 6 of this subchapter ~~[Subchapter F of this chapter]~~ (relating to Case Management Reimbursement Charges).

§106.1463. Services Provided by Schools.

The Division ~~[Commission]~~ shall not pay for any service that is the school's responsibility under the Individuals With Disabilities Education Act (IDEA) and any federal and state rules and regulations adopted pursuant thereto.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. ORDER OF SELECTION FOR PAYMENT OF SERVICES

40 TAC §§106.1485, 106.1487, 106.1489

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1485. Defined Purpose.

(a) The purpose of this subchapter is to establish an order of selection for payment of services that may be used when funds are insufficient to serve all eligible children.

(b) The public may contact the Division ~~[Commission]~~ at any local office or may call the agency's toll-free line (1-800-252-5204) to inquire if the agency is operating under provisions of this subchapter and to inquire about the expenditure category at which the Division ~~[Commission]~~ may be operating.

§106.1487. Application of Order of Selection.

(a) The order of selection is applied after eligibility for services is determined.

(b) A service that can be paid from resources other than the Division's ~~[Commission's]~~ may be provided to a child regardless of the order of selection.

§106.1489. Order of Selection Expenditure Categories.

Order of Selection expenditure categories, from most restrictive to least restrictive, are:

(1) Category A--No expenditure of case service funds.

(2) Category B--Expenditure of case service funds only for diagnostics.

(3) Category C--Expenditure of case service funds authorized for any planned, necessary BCVDD Program services according to the following priorities:

(A) Priority 1--Children who meet the definition of being blind.

(B) Priority 2--Children who are blind in one eye and who have a severe visual loss in the other eye.

(C) Priority 3--Children who have a corrected visual acuity of 20/70 or worse in the better eye.

(D) Priority 4--Children who are certified as visually impaired by a local education agency.

(E) Priority 5--Children who have a nonsevere visual loss and a degenerative eye condition that will result in further visual loss;

(F) Priority 6--Children who need a prosthesis.

(G) Priority 7--Children with nonsevere visual losses that affect visual acuity who are in need of services other than correction of a refractive error.

~~{(H) Priority 8--Children with treatable visual impairments that may or may not affect visual acuity and children with an uncorrected visual acuity of 20/70 or worse in both eyes who need no services other than correction of a refractive error.}~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 6. CASE MANAGEMENT REIMBURSEMENT CHARGES

40 TAC §106.1501

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1501. Legal Basis and Policy.

Public Law 100-203, §4118(i), the Omnibus Budget Reconciliation Act of 1987, has been invoked by the Department of State Health Services

[Texas Department of Health], which limits the provider of case management for children who are blind and visually impaired in Texas to the Department of Assistive and Rehabilitative Services, Division for Blind Services [Texas Commission for the Blind]; therefore, it is the policy of the Division [Commission] to seek reimbursement for case management services provided to eligible children under this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER M. DONATIONS

40 TAC §§106.1801, 106.1803, 106.1805, 106.1807, 106.1809, 106.1811, 106.1813

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1801. Purpose.

The purpose of these sections is to establish rules for acceptance of private donations and to establish standards of conduct to govern the relationships between officers and employees of the Division for Blind Services [Texas Commission for the Blind] and private donors.

§106.1803. Definitions.

The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Division [Commission]--the Division for Blind Services [Texas Commission for the Blind].

(2) Employee--A regular, acting, or exempt, full- or part-time employee of the Division [commission].

{(3) Officer--A member of the commission's governing board[-].

(3) [(4)] Private donor--One or more individuals or organizations that offer to give or give nonpublic financial assistance to the Division [commission].

§106.1805. Acceptance of Donations.

(a) Donations in the amount of \$500 or more shall be considered by the Assistant Commissioner, Division for Blind Services [Commission's governing board] for acceptance according to Government Code, Chapter 575. Donations in the amount of \$499 or less shall be accepted upon determination of the Assistant Commissioner [Commission's executive director] that the donation is for purposes consistent with Human Resources Code, Chapter 91.

(b) Donations of real property (real estate) shall be accepted by the Division [Commission] only upon authorization of the legislature.

(c) Donations to the Division [Commission] may be for any amount and for specified or unspecified purposes.

§106.1807. Solicitation.

The solicitation of donations by the Division [Commission] shall be limited to purposes consistent with Human Resources Code, Chapter 91.

§106.1809. Investing.

All donations shall be deposited into the state treasury for investment and the Division [Commission] shall expend same in accordance with the provisions of state law.

§106.1811. Restricted/Unrestricted.

(a) Conditional or restrictive donations for purposes specified by the donor may be accepted if the conditions are consistent with the approved purposes of the Division [Commission] and consistent with state laws and these rules. Upon acceptance, restrictive donations shall be used only for purposes specified by the donor.

(b) Unconditional donations shall be used to carry out the approved purposes of the Division [Commission], consistent with state laws and these rules.

§106.1813. Transfer.

No donations shall be transferred by the Division [Commission] to a private or public development fund or foundation unless the Division [Commission] has received written permission for the transfer from the donor or the donor's representative, if applicable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



CHAPTER 107. DIVISION FOR REHABILITATION SERVICES

The Texas Health and Human Services Commission proposes amendments to the rules of the Department of Assistive and Rehabilitative Services, in Title 40, Part 2, Chapter 107, concerning Rehabilitation Services. This proposal repeals Subchapters A, D, and M in their entirety. Subchapter N contains three rules that are repealed and a few amendments. Specifically, this proposal repeals the following: Subchapter A, Texas Rehabilitation Advisory Council, §§107.11, 107.13, 107.15, 107.17, and 107.19; Subchapter B, Vocational Rehabilitation Services Program, Division 4, Eligibility, Ineligibility, and Certification, §107.193; Subchapter D, Extended Rehabilitation Services Program, §§107.601, 107.603, 107.605, 107.607, and 107.609; Subchapter M, Transition Planning Program, §§107.1401, 107.1403, and 107.1405; Subchapter N, Memoranda of Understanding With Other State Agencies, §§107.1611, 107.1615, and 107.1617. This proposal amends Subchapter B, Vocational Rehabilitation Services Program, Division 1, Provision of Vocational Rehabilitation Services, §§107.101, 107.103, 107.107, 107.109, 107.111, 107.113, 107.115, 107.117, 107.119, 107.121,

107.123, 107.125, 107.127, 107.129, 107.131, 107.133, 107.135, and 107.137; and adds new §107.139; Division 2, Client Participation, §§107.151 and §107.153; Division 3, Comparable Benefits, §§107.171, 107.173, and 107.175; Division 4, Eligibility and Ineligibility, §107.191 and §107.197; and adds new §107.193; Division 5, Methods of Administration of Vocational Rehabilitation, §§107.215, 107.217, 107.221, 107.223, and 107.225; Subchapter F, Independent Living Services Program, §§107.801, 107.803, 107.805, and 107.807; and adds new §107.811; Subchapter L, Comprehensive Rehabilitation Services, §107.1203 and §107.1209; and Subchapter N, Memoranda of Understanding with Other State Agencies, §107.1607.

This proposal also changes the title of Chapter 107 from "Rehabilitation Services" to "Division for Rehabilitation Services."

Elsewhere in this issue of the *Texas Register*, the Department of Assistive and Rehabilitative Services contemporaneously proposes the repeal of Subchapter G, Durable Medical Equipment and Assistive Technology Listing, §§107.1001, 107.1003, 107.1005, 107.1007, 107.1009, 107.1011, and 107.1013.

The changes are being proposed to clarify and update program rules from the former Texas Rehabilitation Commission, which was consolidated into the Department of Assistive and Rehabilitative Services in 2004, into rule applicable to programs now administered by the Division for Rehabilitation Services, Department of Assistive and Rehabilitative Services, as provided by House Bill 2292, 78th Legislature, Regular Session.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that, for each year of the first five years that the rules will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that, for each year of the first five years the rules will be in effect, the public benefit anticipated as a result of adopting the proposed rules will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the rules as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code, §2001.022, the Health and Human Services Commission has determined that the proposed rules will not affect a local economy.

Comments on the proposal may be submitted to Barbara Lazard, Assistant General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756-3178.

SUBCHAPTER A. TEXAS REHABILITATION ADVISORY COUNCIL

40 TAC §§107.11, 107.13, 107.15, 107.17, 107.19

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.11. *Establishment.*

§107.13. *Definitions.*

§107.15. *Composition and Appointment.*

§107.17. *Functions of the Council.*

§107.19. *Resources.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. VOCATIONAL REHABILITATION SERVICES PROGRAM DIVISION 1. PROVISION OF VOCATIONAL REHABILITATION SERVICES

40 TAC §§107.101, 107.103, 107.107, 107.109, 107.111, 107.113, 107.115, 107.117, 107.119, 107.121, 107.123, 107.125, 107.127, 107.129, 107.131, 107.133, 107.135, 107.137, 107.139

The amendments and new rule are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.101. *Basic Criteria.*

The Vocational Rehabilitation Services Program is a joint state-federal funded program. The Division [~~commission~~] cooperates with the federal government in carrying out the rehabilitation of individuals with disabilities under state and federal law and to this end adopts such methods of administration as are found by the federal government to be necessary and not contrary to existing state laws for the proper and efficient operation of such rehabilitation program. The Division [~~commission~~] complies with such requirements as may be necessary to obtain federal funds in the maximum amount and most advantageous proportion authorized.

§107.103. *Organization for Vocational Rehabilitation Services.*

(a) For purposes of field operation, the state is divided into geographical regions with a regional director in charge of each region. The regional director is responsible for the supervision, planning, and direction of vocational rehabilitation services in the [~~his~~] region.

(b) (No change.)

(c) Counselors assigned to each region have the responsibility of making the initial determination as to eligibility for vocational rehabilitation services and to provide such services in accordance with policies and procedures of the Division [~~commission~~].

§107.107. Preliminary and Comprehensive Assessment.

(a) Preliminary assessment. To determine whether an individual is eligible for vocational rehabilitation services, the Division [commission] conducts a preliminary assessment sufficient to determine eligibility based on:

(1) a determination that ~~[whether]~~ the individual has a physical or mental impairment;

(2) a determination that ~~[whether]~~ the physical or mental impairment constitutes or results in a substantial impediment to employment for the individual;

(3) a determination that ~~[whether]~~ the individual can benefit in terms of achieving an employment outcome, after receiving vocational rehabilitation services; and

(4) a presumption that the individual can benefit in terms of an employment outcome from the provision of vocational rehabilitation services ~~[whether the individual requires VR services to prepare for, enter into, engage in, or retain gainful employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice].~~

(b) Comprehensive assessment. The Division [commission], as appropriate in each case, shall conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and needs, including the need for supported employment services, of an eligible individual, in the most integrated setting possible, consistent with the informed choice of the individual. The comprehensive assessment is limited to information that is necessary to identify the rehabilitation needs of the individual and develop the IPE and may, to the extent needed, include:

(1) - (4) (No change.)

(c) Existing information. The Division [commission] shall use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information, including information that is provided by the individual, the family of the individual, and education agencies.

§107.109. Counseling, Guidance, and Referral.

The Division [commission] provides counseling, guidance, and referral services as necessary for the vocational rehabilitation of consumers [clients]. Counseling is a process in which a vocational rehabilitation counselor works in a face-to-face relationship with consumers [a client] in order to help the consumers [clients] understand both ~~[his]~~ problems and ~~[his]~~ vocational potential. Counseling is a continuous process throughout the consumer's [client's] rehabilitation program to help ~~[him]~~ make the best possible vocational, personal, and social adjustment. Referral means referral of the consumer [client] to other agencies for assistance not available from the Division [commission].

§107.111. Physical Restoration Services.

(a) The Division [commission] provides physical restoration services which are necessary to correct or substantially modify an individual's physical condition within a reasonable period of time. The physical conditions for which such services are rendered must be stable or slowly progressive.

~~[(b) Before the commission initiates any type of physical restoration, exclusive of prosthetic or orthotic devices, speech or hearing therapy, or psychological services, the client or, as appropriate, his parent, guardian, or other representative, must complete and sign the physical restoration application form of the commission.]~~

(b) ~~[(e)]~~ The Division [commission] does not provide prenatal or postnatal care.

§107.113. Mental Restoration Services.

(a) The Division [commission] provides mental restoration services for mental conditions which are stable or slowly progressive.

(b) The Division [commission] provides psychiatric treatment as a limited service on a short-term basis only.

(c) The Division [commission] provides psychotherapy [psychological counseling] as a limited service only to support the completion or achievement of the vocational objective.

(d) The Division [commission] provides mental restoration services utilizing only physicians licensed by the state and skilled in the diagnosis and treatment of mental or emotional disorders, psychologists licensed or certified in accordance with state law, Licensed Master Social Workers [master social workers]-advanced clinical practitioners who are licensed by the Texas State Board of Social Work Examiners or Licensed Professional Counselors who are licensed by the Texas State Board of Examiners of Professional Counselors.

§107.115. Vocational and Other Training Services.

(a) The Division [commission] purchases ~~[commission provides]~~ vocational and other training services for those Consumers [to those clients] who require additional knowledge or skills to enter employment consistent with their aptitudes and ability, and compatible with their physical or mental impairments.

(b) The Division [commission] purchases ~~[commission provides]~~ vocational and other training through an appropriate facility. These facilities include accredited colleges and universities; certified public or private businesses; technical and vocational schools; on-the-job training; correspondence course training; tutorial training; and community rehabilitation program ~~[facility]~~ training.

(c) The Division [commission] requires that each consumer [client] who is provided with vocational or other training services by the Division [commission] apply for financial assistance where reasonably available. This assistance can include federal, state, or local grants-in-aid, and private scholarships where applicable. If the consumer [client] has not done so prior to the time of application for vocational rehabilitation services, the counselor assists the consumer [client] in doing so.

(d) The Division [commission] does not pay the nonresident fee to a college or university outside Texas if the course is available at a school within Texas, but does pay tuition at the same rate as would have been paid to a comparable college in Texas.

(e) The Division [commission] will not pay tuition and fees to a business, technical, or vocational school in excess of the published fees. Textbooks supplied to consumers [client] of the Division [commission] become the property of the consumer [client] provided the consumer [client] finishes the prescribed training and enters a field of employment compatible with the employment goal ~~[vocational objective]~~. If the consumer [client] drops out of training or enters employment not related to the vocational objective, the textbooks remain the property of the Division [commission].

§107.117. Maintenance.

The Division [commission] may pay maintenance to a consumer [client]. Maintenance is a ~~[cash]~~ payment to a consumer [an applicant or client] made during any stage of the rehabilitation process to cover basic living expenses, such as food, shelter, clothing, and other subsistence expenses that are in excess of the normal expenses of the consumer [client], and are necessary to derive the full benefit of other vocational rehabilitation services.

§107.119. Transportation.

The Division ~~[commission]~~ may pay for ~~[provide]~~ transportation services for consumers ~~[to applicants and clients]~~ in connection with other vocational rehabilitation services.

§107.121. Interpreter Services for the Deaf.

(a) The Division ~~[commission]~~ may provide interpreter services for consumers ~~[clients]~~ who are deaf when such services will assist in the attainment of the rehabilitation objective.

(b) The Division ~~[commission]~~ may provide telecommunications, sensory, and other technological aids and devices to facilitate training, employability, and job opportunities for persons with significant ~~[severe]~~ disabilities, particularly persons who are deaf and individuals with profound hearing or speech impairments.

§107.123. Job Placement.

(a) The principal objective is a competitive employment outcome for each consumer ~~[client]~~ which is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(b) Employment ~~[Gainful employment]~~ outcomes include ~~[includes]~~ entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated ~~[competitive]~~ labor market; supported employment; or any other type of employment in an integrated setting, including ~~[the practice of a profession;]~~ self-employment; telecommuting, or business ownership. ~~[homemaking; farm or family work; sheltered employment; homebound employment; or other gainful work.]~~

§107.125. Postemployment Services.

(a) The Division ~~[commission]~~ may provide postemployment services to consumers ~~[clients]~~ who have been determined rehabilitated in order to maintain or strengthen the consumer's ~~[client's]~~ employment.

(b) (No change.)

§107.127. Occupational Licenses, Tools, Equipment, and Training Supplies.

(a) The Division ~~[commission]~~ may engage in or contract for activities to provide consumers ~~[clients]~~ with occupational licenses, including any license, permit, or other written authority required by a state, city, or other governmental unit to be obtained in order to enter an occupation or self-employment.

(b) The Division ~~[commission]~~ may provide consumers ~~[clients]~~ with tools, equipment, initial stocks, goods, and supplies necessary to enter an occupation or self-employment.

(c) Consumers ~~[clients]~~ shall safeguard and maintain in a serviceable condition tools and equipment and will not wrongfully dispose of them.

(d) Consumers ~~[clients]~~ shall sign a prescribed agreement form at the time they receive tools and equipment.

§107.129. Extended Evaluation.

(a) Extended evaluation is used only to determine whether an applicant with a significant ~~[severe]~~ disability is capable of achieving an employment outcome.

(b) The Division ~~[commission]~~ provides only those vocational rehabilitation services necessary to determine if the individual is capable of achieving an employment outcome. ~~[the nature and scope of services required to achieve a gainful employment outcome for a total period not in excess of 18 months.]~~ Services are provided in the most

integrated setting possible, consistent with the informed choice of the individual.

(c) The Division ~~[commission]~~ may terminate extended evaluation services at any time ~~[prior to the expiration of the 18-month period]~~ when:

(1) - (3) (No change.)

(d) Where an individual is determined ineligible for vocational rehabilitation services after extended evaluation, the Division conducts a periodic review at least annually of the ineligibility decision in which the individual is afforded a clear opportunity for full consultation in the reconsideration of such decision. A periodic review is not required when the individual has refused services, has refused a periodic review, is no longer present in the state, the individual's whereabouts unknown, or the medical condition is rapidly progressive or terminal.

§107.131. Individualized Plan for Employment.

(a) The Division ~~[commission]~~ initiates and continuously develops an individualized plan for employment for each individual eligible for vocational rehabilitation services and for each individual being provided such services in extended evaluation.

(b) The counselor and consumer ~~[client]~~ or, as appropriate, the consumer's ~~[client's]~~ parent, guardian, or other representative use information obtained during the assessment process to assist the consumer in making informed choices about ~~[determine]~~ vocational rehabilitation needs, employment ~~[long term vocational]~~ goal, intermediate rehabilitation objectives, and the nature and scope of vocational rehabilitation services and the service providers to be included in the IPE.

(c) The consumer may develop all or part of the IPE with or without assistance from a DRS Counselor, a qualified vocational rehabilitation counselor not employed by DRS, or another resource outside of DRS. DRS will not pay for assistance with IPE development. The IPE is not final until approved by the counselor. [The counselor and the client or, as appropriate, the client's parent, guardian, or other representative develop jointly the individualized plan for employment, which is consistent with the individual's unique strengths, priorities, concerns, abilities, capabilities, career interests, and informed choice.] A copy of such program and any amendments thereto are provided to the consumer ~~[client]~~ or, as appropriate, the consumer's ~~[client's]~~ parent, guardian, or other representative.

(d) (No change.)

(e) The counselor shall advise the consumer ~~[client]~~ of the consumer's ~~[client's]~~ rights and the means by which the consumer ~~[client]~~ may express and seek remedy for dissatisfaction with the program, including the opportunity for an administrative review of Division ~~[commission]~~ action and a fair hearing in accordance with the Administrative Procedure and Texas Register Act, §13 and §14.

(f) The counselor reviews the individualized plan for employment as often as necessary, but at least on an annual basis, at which time each consumer ~~[client]~~, or as appropriate, the consumer's ~~[client's]~~ parent, guardian, or other representative, is ~~[are]~~ afforded an opportunity to review such program and, if necessary, jointly redevelop its terms.

[(g) Where an individual is determined ineligible for vocational rehabilitation services after extended evaluation, the commission conducts a periodic review at least annually of the ineligibility decision in which the individual is afforded a clear opportunity for full consultation in the reconsideration of such decision. A periodic review is not required when the individual has refused services; has refused a periodic review; is no longer present in the state, the individual's whereabouts unknown, or the medical condition is rapidly progressive or terminal.]

(g) ~~[(h)]~~ The individualized plan for employment is a joint commitment which ~~[generally]~~ must be signed by both the counselor and the individual.

(h) ~~[(i)]~~ The Division ~~[commission]~~ may provide only those goods and services which can reasonably be expected to benefit an individual with a disability in terms of employment ~~[employability]~~.

§107.133. Cooperative Programs Utilizing Third-Party Funds.

When the Division ~~[commission]~~ enters into a third-party cooperative arrangement for providing or administering vocational rehabilitation services with another state agency or a local public agency that is furnishing part or all of the non-federal share, the state plan will assure that:

(1) (No change.)

(2) the services provided by the cooperating agency are only available to applicants for, or recipients of, services from the Division ~~[commission]~~;

(3) program expenditures and staff providing services under the cooperative arrangement are under the administrative supervision of the Division ~~[commission]~~; and

(4) (No change.)

§107.135. Participation in Political Activity.

Employees of the Division ~~[commission]~~ engaged in day-to-day administration and operation of the vocational rehabilitation program will not engage in political activity prohibited by the Hatch Act, 5 United States Code, Chapter 1501, or state law.

§107.137. Consultation Regarding the Administration of the State Plan.

(a) The state plan must assure that, in connection with matters of general policy development and implementation arising in the administration of the state plan, the Division ~~[commission]~~ seeks and takes into account the views of:

(1) - (5) (No change.)

(b) The state plan must specifically describe the manner in which the state unit will take into account the views regarding state policy and administration of the state plan that are expressed in the consumer satisfaction surveys conducted by the State Rehabilitation Council under 34 CFR §361.17(h)(3) or by the state agency if it is an independent Division ~~[commission]~~ in accordance with the requirements of 34 CFR §361.16(a)(1).

§107.139. Definitions.

Words and terms are used in this chapter as defined in the Rehabilitation Act of 1973, as amended, and implemented by 34 Code of Federal Regulations and the Human Resources Code, Title 7, unless the context clearly indicates another meaning. Words and terms defined in such federal and state laws and regulations are applicable to this chapter. In addition, the following definitions apply:

(1) Applicant--An individual who applies to the Department of Assistive and Rehabilitative Services for vocational rehabilitation services, comprehensive rehabilitation services, or independent living services.

(2) Consumer--An individual with a disability who is determined eligible by the Department of Assistive and Rehabilitative Services for vocational rehabilitation services, comprehensive rehabilitation services, independent living services, or other department services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel

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DIVISION 2. CLIENT PARTICIPATION

40 TAC §107.151, §107.153

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.151. Basic Living Requirements (BLR).

(a) The purpose of basic living requirements (BLR) is to establish a framework for determining whether the consumer ~~[client]~~ should pay any of the service cost. The Division ~~[commission]~~ does not consider the table of basic living requirements in determining eligibility for vocational rehabilitation services; however, the Division ~~[commission]~~ does apply the table of basic living requirements to determine whether the consumer ~~[client]~~ must contribute to the cost of certain services.

(b) All services are subject to required consumer ~~[client]~~ participation except for the following:

(1) services paid for, or reimbursed by, a source other than the Division ~~[commission]~~;

(2) counseling, guidance, and referral provided by DARS ~~[TRC]~~ staff;

~~[(3) placement services;]~~

(3) ~~[(4)]~~ assessment services, to determine eligibility and determining rehabilitation needs [including diagnostic maintenance and transportation, in any status];

(4) ~~[(5)]~~ interpreter services; ~~[and/or]~~

(5) reader services;

(6) translator services; ~~[]~~

(7) personal assistant services; and/or

(8) job related services: job placement, job quest training, services leading to supported employment, and job coach services.

(c) Consumers who are recipients of Social Security disability benefits, either SSI or SSDI, are not required to participate in the cost of services.

§107.153. Equitable Treatment and Notice.

(a) The Division ~~[commission]~~ applies the table of basic living requirements uniformly to assure that equitable treatment is accorded all consumers ~~[clients]~~ in similar circumstances.

(b) The counselor will inform each consumer [e~~lie~~nt] of the services which require consumer [e~~lie~~nt] participation in the cost of services and those services which do not require consumer [e~~lie~~nt] participation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. COMPARABLE BENEFITS

40 TAC §§107.171, 107.173, 107.175

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.171. Comparable Services and Benefits.

If comparable services or benefits exist under any other program and are available to the eligible individual at the time needed to achieve the rehabilitation objective in the individual's IPE the Division [e~~om~~mission] shall use those comparable services or benefits to meet, in whole or in part, the cost of vocational rehabilitation services.

§107.173. Availability of Comparable Services and Benefits.

The Division [e~~om~~mission] determines whether comparable services or benefits are available under any other program or law to the consumer [e~~lie~~nt] to meet, in whole or in part, the cost of any VR services. The Division [e~~om~~mission] shall use all available comparable services or benefits to meet, in whole or in part, the cost of vocational rehabilitation services. The Division [e~~om~~mission] will not make this determination in cases where:

(1) the determination of the availability of comparable services and benefits under any other program would delay the provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional; [e~~r~~]

(2) an immediate job placement would be lost due to a delay in the provision of comparable services and benefits; or [-]

(3) the determination will interrupt or delay progress toward achieving the employment outcome on the IPE.

§107.175. Maximum Utilization of Community Resources.

In providing vocational rehabilitation services, the Division [e~~om~~mission] utilizes, to the maximum extent possible, public and other vocational or technical training facilities and other appropriate resources in the community.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. ELIGIBILITY AND INELIGIBILITY

40 TAC §§107.191, 107.193, 107.197

The amendments and new rule are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.191. Basic Requirements for Eligibility.

(a) The Division [e~~om~~mission] bases eligibility for vocational rehabilitation (VR) services on the following requirements only.

(b) The Division [a~~pp~~licant] must:

(1) determine that the applicant has a physical or mental impairment;

(2) determine that the impairment constitutes or results in a substantial impediment to employment;

(3) establish that the applicant requires VR services to prepare for, enter, engage in, or retain gainful employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(4) presume that the applicant is capable of achieving an employment outcome, unless there is a demonstration by clear and convincing evidence in extended evaluation that the applicant is incapable of achieving an employment outcome due to the severity of the individual's disability.

[(1) have a physical or mental disability that constitutes or results in a substantial impediment for the individual to employment; and]

[(2) be capable of achieving an employment outcome, after receiving VR services; and]

[(3) require VR services to prepare for, enter, engage in, or retain gainful employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.]

(c) Social Security disability recipients and beneficiaries are presumed [a~~utomatica~~lly] eligible for VR services.

§107.193. Prohibited Factors.

(a) The Division will not impose, as part of determining eligibility under this subchapter, a duration of residence requirement that excludes from services any applicant who is present in the state.

(b) In making a determination of eligibility under this subchapter, the Division will ensure that:

(1) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability; and

(2) The eligibility requirements are applied without regard to the:

(A) age, gender, race, color, or national origin of the applicant;

(B) type of expected employment outcome;

(C) source of referral for vocational rehabilitation services; and

(D) particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.

§107.197. Determination of Ineligibility.

When an applicant is determined ineligible for vocational rehabilitation services or an individual receiving services under an IPE is no longer eligible for services, the Division ~~[commission]~~ shall:

(1) make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, the individual's representative;

(2) inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including the reasons for that determination and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of a determination by the rehabilitation counselor ~~[or coordinator]~~;

(3) provide the individual with a description of services available from a Client Assistance Program ~~[client assistance program]~~ established under 34 CFR Part 370 and information on how to contact that program; and

(4) review within 12 months and annually thereafter, if requested by the individual or, if appropriate, by the individual's representative any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. This review need not be conducted in situations where the individual has refused it, the individual is no longer present in the state, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

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40 TAC §107.193

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.193. Factors Disregarded in Determining Eligibility.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. METHODS OF ADMINISTRATION OF VOCATIONAL REHABILITATION

40 TAC §§107.215, 107.217, 107.221, 107.223, 107.225

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.215. Statewide Studies and Program Evaluation.

(a) The Division ~~[commission]~~ conducts continuing statewide studies of the needs of individuals with disabilities within the state and the methods by which these needs may be most effectively met.

(b) Such studies are directed toward:

(1) assessing ~~[assessment]~~ of the rehabilitation needs of individuals with significant ~~[severe]~~ disabilities who reside in the state;

(2) reviewing ~~[review of]~~ the effectiveness of outreach procedures used to identify and serve individuals with disabilities who are minorities and individuals with disabilities who are unserved and underserved by the vocational rehabilitation system; and

(3) reviewing ~~[of]~~ a broad variety of methods to provide, expand, and improve vocational rehabilitation services to individuals with the most significant ~~[severe]~~ disabilities, including individuals receiving supported employment services;

(4) ensuring the orderly and effective development of vocational rehabilitation services; and

(5) reviewing the efficacy of the criteria employed by the Division ~~[commission]~~ in making ineligibility decisions with respect to applicants for vocational rehabilitation services. Reports of such studies are available to the public for review.

§107.217. Annual Evaluation.

(a) The Division ~~[commission]~~ conducts an annual comprehensive evaluation of the effectiveness of the state's vocational rehabilitation program in achieving:

(1) - (2) (No change.)

(b) The evaluation measures the adequacy of Division [eommission] performance in providing vocational rehabilitation services, especially to those individuals with the most significant [severe] disabilities, in [the] light of the state's vocational rehabilitation program financial resources. The evaluation has the following minimum objectives:

(1) to insure that the rehabilitation program is serving the target population and these services are provided in an equitable manner;

(2) to insure that consumers [elients] are placed in gainful employment suitable to their capabilities, interest, and informed choice;

(3) to measure the extent to which undue delays are avoided in providing consumers [elients] with services;

(4) to insure that available resources are utilized effectively to achieve maximum operational efficiency;

(5) to insure that counselors maintain manageable-sized caseloads and provide timely and adequate services to individual consumers [elients];

(6) to insure that consumers [elients] retain the benefits obtained from the rehabilitation process;

(7) to insure that the need for postemployment services is satisfied;

(8) to identify reasons why consumers [elients] are not successfully rehabilitated; and

(9) to insure that the consumer [elient] is satisfied with the [his] individualized plan for employment.

§107.221. Periodic Reevaluation of Extended Employment.

(a) The Division [eommission] reviews and reevaluates annually, for two years and thereafter if requested [or more often if required,] the status of each individual who has chosen employment in a non-integrated setting. [determined by the state unit to have achieved an employment outcome in an extended employment setting in a community rehabilitation program or other employment setting in which the individual is compensated in accordance with the Fair Labor Standards Act, §14(e).] This review or reevaluation must include input from the individual or in an appropriate case, the individual's representative to determine the interests, priorities, and needs of the individual for competitive employment in an integrated setting in the labor market.

(b) The Division [eommission] makes maximum effort, including the identification of vocational rehabilitation services, reasonable accommodations, and other support services, to enable the eligible individual to benefit from training in, or to be placed in employment in, an integrated setting.

(c) The Division [eommission] provides services designed to promote movement from extended employment to integrated employment, including supported employment, independent living, and community participation.

§107.223. Individuals Determined To Be Rehabilitated.

(a) The Division [eommission] determines a consumer [elient] to be rehabilitated when the following requirements are met:

(1) the provision of services under the individual's IPE has contributed to the achievement of the employment outcome;

(2) the employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(3) the employment outcome is in an [the most] integrated setting [possible, consistent with the individual's informed choice];

(4) the individual has maintained the employment outcome for a period of at least 90 days; and

(5) the individual and the rehabilitation counselor consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

(b) After a consumer [elient] has been determined to be rehabilitated, the Division [eommission] may provide postemployment services as required to maintain or regain suitable employment.

§107.225. Training and Supervision of Counselors.

The Assistant Commissioner for Rehabilitation Services [Deputy Commissioner for Field/External Operations] is accountable for the monitoring and oversight of Vocational Rehabilitation Counselor performance and decision making in the following areas listed in paragraphs (1) - (5) of this section:

(1) the selection of employment goals [vocational objectives] according to a consumer's [elient's] skills, experience, and knowledge;

(2) the documenting of a consumer's [elient's] impediment to employment;

(3) the selection of rehabilitation services that are reasonable and necessary to achieve a consumer's employment goal [elient's vocational objective];

(4) the measurement of consumer [elient] progress toward the vocational objective, including the documented, periodic evaluation of the consumer's [elient's] rehabilitation and participation; and

(5) the determination of eligibility of employed and unemployed applicants for rehabilitation services using criteria set forth in §107.191 of this title (relating to Basic Requirements for Eligibility)[, defined by board rule] to document whether a consumer [elient] is eligible for services [substantially underemployed or at risk of losing employment].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

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SUBCHAPTER D. EXTENDED REHABILITATION SERVICES PROGRAM

40 TAC §§107.601, 107.603, 107.605, 107.607, 107.609

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.601. *Purpose.*

§107.603. *Availability of Services.*

§107.605. *Basic Requirements for Eligibility.*

§107.607. *Ineligibility.*

§107.609. *Services Provided.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. INDEPENDENT LIVING SERVICES PROGRAM

40 TAC §§107.801, 107.803, 107.805, 107.807, 107.811

The amendments and new rule are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.801. *Purpose.*

(a) The purpose of the Independent Living Services Program is to provide rehabilitation services to individuals with significant [severe or catastrophic] disabilities when they are necessary to [in order that such persons may] achieve a greater level of self-care and independent living.

(b) The Independent Living Services Program is a joint state-federal program. All federal laws and regulations required by the acceptance of these funds by the state are applicable to these rules.

§107.803. *Basic Requirements for Eligibility.*

An individual meets the basic requirements for eligibility if [he is a person with a severe or catastrophic disability under current published commission regulations and there is]:

(1) the individual has a significant physical, mental, cognitive or sensory disability that interferes with the ability to remain or become independent in the family, home or community; and

(2) independent living services are needed to improve the individual's ability to be independent, maintain independence, or move

towards independence in the family, home or community by decreasing the amount of assistance and/or supervision needed to perform daily activities.

~~{(1) the presence of a physical or mental disability which constitutes or results in a substantial impediment to the individual's ability to function independently in his family or community; and}~~

~~{(2) a reasonable expectation that independent living services will benefit the individual in terms of improving his ability to function independently in his family or community; and}~~

~~{(3) compliance with the basic living requirements table.}~~

§107.805. *Ineligibility.*

An individual becomes ineligible for independent living services when there is no presence of a significant disability and/or independent living services are not required to be independent, maintain independence or move towards independence in the home, family or community. [An individual becomes ineligible for independent living services when the provision of such programmed services would be ineffective in achieving their purpose of a greater level of self-care and independent living.]

§107.807. *Services Provided.*

The provisions of independent living services include:

(1) counseling and guidance;

(2) advocacy/self services;

(3) independent living skills training;

(4) information and referral;

(5) peer counseling;

(6) provision of and training in the use of assistive devices/equipment;

(7) training family members to assist IL consumer to live more independently;

(8) mobility training;

(9) personal assistance services;

(10) preventive services;

(11) prosthesis, orthotics and other appliances;

(12) access to public transportation;

(13) adult basic education;

(14) youth to adult transition services;

(15) therapeutic treatment;

(16) restoration services;

(17) interpreter services; and

(18) modification of vehicles and residences.

~~{(1) counseling and guidance;}~~

~~{(2) training;}~~

~~{(3) adult basic education;}~~

~~{(4) rehabilitation facility training;}~~

~~{(5) maintenance;}~~

~~{(6) transportation;}~~

~~{(7) restoration services;}~~

~~{(8) interpreter services; and}~~

~~[(9) modification of vehicles and residences.]~~

§107.811. Consumer Participation.

(a) The purpose of basic living requirements (BLR) is to establish a framework for determining whether the consumer should pay any of the service cost. The Division does not consider the table of basic living requirements in determining eligibility for independent living services; however, the Division does apply the table of basic living requirements to determine whether the consumer must contribute to the cost of certain services.

(b) All services are subject to required consumer participation except for the following:

(1) services paid for, or reimbursed by, a source other than the Division;

(2) counseling, guidance, and referral provided by DARS staff;

(3) assessment services, to determine eligibility and determining independent living needs, including any associated maintenance and transportation;

(4) interpreter services;

(5) reader services; and/or

(6) translator services.

(c) Reference: §107.151 of this title (relating to Basic Living Requirements (BLR)).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER L. COMPREHENSIVE REHABILITATION SERVICES

40 TAC §107.1203, §107.1209

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.1203. Basic Requirements for Eligibility.

Basic criteria for eligibility include:

(1) - (4) (No change.)

(5) individual must not currently be eligible for another Division for Rehabilitation Services [Texas Rehabilitation Commission] Program;

(6) - (7) (No change.)

§107.1209. Limitations of Services.

The following limitations apply to the Comprehensive Rehabilitation Services (CRS) Program.

(1) Inpatient comprehensive medical rehabilitation hospitalization services:

(A) in order to receive this service, at the time the individual is referred, no more than one year may have elapsed since the onset of injury;

~~[(B) the individual must be sufficiently medically stable to be able to actively plan and participate in a program of CRS;]~~

(B) ~~[(C)]~~ initial acute medical procedures are not permitted;

~~[(D) an individual with traumatic brain injury must be functioning at least at Rancho Level IV or equivalent (emerged from coma);]~~

~~[(E) sponsorship of CRS program services is dependent upon client eligibility and availability of funding;]~~

(C) ~~[(F)]~~ only inpatient facilities located within the State of Texas [which are Commission on Accreditation of Rehabilitation (CARF) certified] may be utilized;

(D) ~~[(G)]~~ sponsorship will be limited to a maximum of 90 days of inpatient comprehensive medical rehabilitation services.

(2) Outpatient services:

(A) in order to receive this service, at the time of referral [;] no more than two years may have elapsed since the onset of injury;

~~[(B) the individual must be sufficiently medically stable to be able to actively plan and participate in a program of CRS services;]~~

~~[(C) an individual with traumatic brain injury must be functioning at least at Rancho Scale Level IV, or equivalent (emerged from coma);]~~

(B) ~~[(D)]~~ services can be provided in any combination of those listed in §107.1207 of this title (relating to Services Provided) [this section], but the total number of hours of outpatient therapies [physical therapy, occupational therapy, and speech therapy] paid with CRS funds will not exceed 120 hours.

(3) Post-acute brain injury rehabilitation services:

(A) limited to individuals with traumatic brain injury;

(B) there is no time limitation since onset of injury;

~~[(C) an individual with traumatic brain injury must be functioning at least at Rancho Scale Level IV or equivalent (emerged from coma);]~~

(C) ~~[(D)]~~ only facilities located within the State of Texas may be utilized;

(D) ~~[(E)]~~ sponsorship will be limited to a maximum of six months.

(4) At the time of discharge from services, prescribed drugs and medical supplies may not exceed a 30-day supply.

(5) If, during the course of services, the individual is not making the expected progress, the case will be re-evaluated to determine whether continued sponsorship is appropriate.

(6) If, during the course of services, the individual becomes eligible for another of the Division's [commission's] programs (independent living services, [extended rehabilitation services,] vocational rehabilitation, etc.), sponsorship of Comprehensive Rehabilitation Services [comprehensive medical rehabilitation services] will be shifted to that program immediately after eligibility determination.

(7) Sponsorship of CRS Program services is dependent upon consumer eligibility and availability of funding.

(8) An individual with traumatic brain injury must be functioning at least at Rancho Los Amigos Scale Level IV or equivalent (emerged from coma) in order to receive purchased services from this program.

(9) The individual must be sufficiently medically stable to be able to actively plan and participate in a program of CRS Services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

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Department of Assistive and Rehabilitative Services

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SUBCHAPTER M. TRANSITION PLANNING PROGRAM

40 TAC §§107.1401, 107.1403, 107.1405

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.1401. *Purpose.*

§107.1403. *Planning Services.*

§107.1405. *Interagency Coordination.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER N. MEMORANDA OF UNDERSTANDING WITH OTHER STATE AGENCIES

40 TAC §107.1607

The amendment is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.1607. *Coordinated Services for Children and Youths.*

(a) The Department of Assistive and Rehabilitative Services [~~Texas Rehabilitation Commission~~] adopts by reference an amendment to a joint memorandum of understanding between the Texas Rehabilitation Commission and the Texas Department of Protective and Regulatory Services dated May 21, 1993 §702.405 [~~(§736.701)~~] of this title (relating to Coordinated Services for Children and Youths) as amended in a proposal published on January 27, 1995 (20 TexReg 43) and adopted on March 10, 1995 (20 TexReg 1765).

(b) Copies of the memorandum of understanding are available from the Department of Assistive and Rehabilitative Services [~~Texas Rehabilitation Commission, Attention Larry Lottman, 4800~~ [4900] North Lamar Boulevard, Austin, Texas 78751.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §§107.1611, 107.1615, 107.1617

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.1611. *Memorandum of Understanding Concerning Coordinating the Delivery of Services to Deaf Persons and Reduce Duplication of Services.*

§107.1615. *Provision of Services to Individuals with Visual Handicaps.*

§107.1617. *Alcohol and Drug Abuse.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 107. REHABILITATION SERVICES
SUBCHAPTER C. DUE PROCESS HEARINGS
AND MEDIATION BY APPLICANTS/CLIENTS
CONCERNING DETERMINATIONS BY
AGENCY PERSONNEL THAT AFFECT
THE PROVISION OF VOCATIONAL
REHABILITATION SERVICES

**40 TAC §§107.401, 107.403, 107.405, 107.407, 107.409,
107.411, 107.413, 107.415**

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Health and Human Services Commission proposes changes to the rules of the Department of Assistive and Rehabilitative Services, Title 40, Part 2, Chapter 107, concerning Rehabilitation Services. This proposal repeals Subchapter C, §§107.401, 107.403, 107.405, 107.407, 107.409, 107.411, 107.413, and 107.415, concerning Due Process Hearings and Mediation by Applicants/Clients Concerning Determinations by Agency Personnel that Affect the Provision of Vocational Rehabilitation Services.

Elsewhere in this issue of the *Texas Register* the Department of Assistive and Rehabilitative Services contemporaneously proposes rules in Chapter 101, new Subchapter E, Appeals and Hearing Procedures for Vocational Rehabilitation and Independent Living Programs.

The repeal and new rules are being proposed to clarify and update program rules from the former Texas Rehabilitation Commission, which was consolidated into the Department of Assistive and Rehabilitative Services in 2004, into agency-wide appeals and hearings rules applicable to all vocational rehabilitation and independent living programs now administered by Department of Assistive and Rehabilitative Services, as provided by House Bill 2292, 78th Legislature, Regular Session.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the repeal will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the repeal will be in effect, the public benefit anticipated

as a result of repealing the rules will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the repeal as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed repeal will not affect a local economy.

Comments on the proposal may be submitted to Barbara Lazard, Assistant General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756-3178.

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.401. *Purpose and Scope.*

§107.403. *Definitions.*

§107.405. *General Requirements.*

§107.407. *Mediation and Due Process Hearings.*

§107.409. *Motion for Reconsideration.*

§107.411. *Finality of the Hearing Officer's Decision.*

§107.413. *Civil Action.*

§107.415. *Time for Hearing.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

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SUBCHAPTER G. DURABLE MEDICAL
EQUIPMENT AND ASSISTIVE TECHNOLOGY
LISTING

**40 TAC §§107.1001, 107.1003, 107.1005, 107.1007,
107.1009, 107.1011, 107.1013**

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Health and Human Services Commission proposes changes to the rules of the Department of Assistive and Rehabilitative Services, Title 40, Part 2, Chapter 107, relating to Rehabilitation Services. This proposal repeals all of Subchapter G, Durable Medical Equipment and Assistive Technology

Listing, §§107.1001, 107.1003, 107.1005, 107.1007, 107.1009, 107.1011 and 107.1013.

Elsewhere in this issue of the *Texas Register* the Department of Assistive and Rehabilitative Services contemporaneously proposes new rules relating to Durable Medical Equipment and Assistive Technology Listing in a new Subchapter F of Chapter 101 of this title. The repeal and new rules are being proposed to clarify and update program rules from the former Texas Rehabilitation Commission, which was consolidated into the Department of Assistive and Rehabilitative Services in 2004, into rules applicable to programs now administered by the Division for Rehabilitation Services, Department of Assistive and Rehabilitative Services, as provided by House Bill 2292, 78th Legislature, Regular Session.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the repeal will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of the repeal of the rules will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the repeal as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed repeal will not affect a local economy.

Comments on the proposal may be submitted to Barbara Lazard, Assistant General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756-3178.

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§107.1001. *Legal Basis and Purpose.*

§107.1003. *Definition.*

§107.1005. *Listing Items for Donation.*

§107.1007. *Stickers for Retailers.*

§107.1009. *Referral of Individuals.*

§107.1011. *Local Organizations.*

§107.1013. *Contracting.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 108. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES

The Texas Health and Human Services Commission proposes changes to the rules of the Department of Assistive and Rehabilitative Services, in Title 40, Part 2, Chapter 108, relating to Division for Early Childhood Intervention Services. This proposal repeals Subchapter B, §108.65, concerning Opportunities for Citizen Participation. This proposal also repeals Subchapter C, §§108.85, 108.87, 108.89, and 108.91, concerning Early Childhood Intervention Advisory Committee. The substance of the repealed rules are being transferred to Chapter 101 of this title, relating to Administrative Rules and Procedures, into a new Subchapter A, General Rules, §101.105, and a new Subchapter D, Advisory Committees and Councils, §101.605. The proposals of which are being contemporaneously proposed elsewhere in this in this issue of the *Texas Register*.

Please note that on March 28, 2007, on the Department of Assistive and Rehabilitative Services' request, the title of Chapter 108 was changed by the Texas Register from "Early Childhood Intervention Services" to "Division for Early Childhood Intervention Services."

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the repeal will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of repealing the rules will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the repeal as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed repeal will not affect a local economy.

Comments on the proposal may be submitted to Barbara M. Lazard, Assistant General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756-3178.

SUBCHAPTER B. PROCEDURAL SAFEGUARDS AND DUE PROCESS PROCEDURES

40 TAC §108.65

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.65. *Opportunities for Citizen Participation.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel

Department of Assistive and Rehabilitative Services

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SUBCHAPTER C. EARLY CHILDHOOD INTERVENTION ADVISORY COMMITTEE

40 TAC §§108.85, 108.87, 108.89, 108.91

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.85. *Purpose.*

§108.87. *Size, Composition, and Terms of Office.*

§108.89. *Advisory Committee Duties.*

§108.91. *Advisory Committee Procedures.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 424-4050



CHAPTER 109. DEAF AND HARD OF HEARING SERVICES

The Texas Health and Human Services Commission proposes amendments to the rules of the Department of Assistive and Rehabilitative Services in Title 40, Part 2, Chapter 109, concerning Deaf and Hard of Hearing Services. This proposal repeals Subchapter A, Specialized Telecommunications Assistance Program, Division 1, Definitions, §§109.1, 109.3, 109.5 and 109.7 and Division 2, Program Eligibility, §§109.31, 109.33, 109.35, 109.37, 109.39, 109.41, 109.43 and 109.45.

A new Subchapter A, General Rules, §109.101 and §109.103 and a new Subchapter D, Specialized Telecommunications Assistance Program, §§109.401, 109.403, 109.405, 109.407, 109.409, 109.411, 109.413, 109.415 and 109.417 replaces the repealed sections.

The title of Chapter 109 will be changed from "Deaf and Hard of Hearing Services" to "Office for Deaf and Hard of Hearing Services."

The repeal and new rules are being proposed to clarify and update program rules from the former Texas Commission for the Deaf and Hard of Hearing, which was consolidated into the Department of Assistive and Rehabilitative Services in 2004, into rules applicable to programs now administered by the Office for Deaf and Hard of Hearing Services, Department of Assistive and Rehabilitative Services, as provided by House Bill 2292, 78th Legislature, Regular Session.

Elsewhere in this issue of the *Texas Register*, the Department of Assistive and Rehabilitative Services contemporaneously proposes the repeal of Chapter 109, Subchapter B, Division 7, Certified Court Interpreters, §§109.901, 109.903, 109.905, 109.907, 109.909, 109.911, 109.913, 109.915, 109.917, 109.919, 109.921, 109.923, 109.925, 109.927, 109.929 and 109.931.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the repeal and new rules will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the repeal and new rules will be in effect, the public benefit anticipated as a result of adopting the proposal will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the repeal and new rules as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposal will not affect a local economy.

Comments on the proposal may be submitted to Barbara M. Lazard, Assistant General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756-3178.

SUBCHAPTER A. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE PROGRAM

DIVISION 1. DEFINITIONS

40 TAC §§109.1, 109.3, 109.5, 109.7

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§109.1. Purpose.

§109.3. Statutory Authority.

§109.5. Definitions.

§109.7. Determination of Basic Equipment or Service.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 30, 2007.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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DIVISION 2. PROGRAM ELIGIBILITY

40 TAC §§109.31, 109.33, 109.35, 109.37, 109.39, 109.41, 109.43, 109.45

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§109.31. Eligibility.

§109.33. Entities Authorized to Certify Disability.

§109.35. Vouchers.

§109.37. Determination of Voucher Value.

§109.39. Redeeming a Voucher.

§109.41. Vendor Listing.

§109.43. Client Confidentiality.

§109.45. Incomplete Applicant Files.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel

Department of Assistive and Rehabilitative Services

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CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES

SUBCHAPTER A. GENERAL RULES

40 TAC §109.101, §109.103

The new sections are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§109.101. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise: DHHS or Office--Office for Deaf and Hard of Hearing Services, Division for Rehabilitation Services, Department of Assistive and Rehabilitative Services.

§109.103. Specialized License Plate Program.

In accordance with Human Resources Code §81.021, funds collected from the sale of specialized license plates under Transportation Code §504.619 and appropriated to DARS will be utilized for services provided under the office's direct services programs, training, and education for individuals who are deaf or hard of hearing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

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Department of Assistive and Rehabilitative Services

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SUBCHAPTER D. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE PROGRAM

40 TAC §§109.401, 109.403, 109.405, 109.407, 109.409, 109.411, 109.413, 109.415, 109.417

The new sections are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§109.401. Purpose.

The rules in this subchapter shall be to set out the organization and administration and other general procedures and practices governing the operation of the specialized telecommunications assistance program.

§109.403. Statutory Authority.

The program is created under authority of the Human Resources Code, Chapter 81 and Senate Bill 667, 75th Texas Legislature, 1997.

§109.405. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Application--The form DHHS uses to gather and document information about an individual applying for assistance under this program.

(2) Basic specialized telecommunications equipment--A device or devices that work together as one device, determined to be necessary and essential to facilitate basic access to the telephone system by a person with a disability.

(3) Basic specialized telecommunications service--A service or services that work together as one service, determined to be necessary and essential to facilitate basic access to the telephone network by a person with a disability and which is less expensive than basic specialized telecommunications equipment that is an option under this program and able to meet the same need.

(4) Financial Independence--When one or more otherwise eligible individuals reside in the same household but are not dependent upon one another for financial support.

(5) Legal guardian--A person appointed by a court of competent jurisdiction to exercise the legal powers of another person.

(6) Program--Specialized Telecommunications Assistance Program (STAP).

(7) PUC--Public Utility Commission of Texas.

(8) Resident--An individual who resides within the state of Texas with the intent to remain in Texas.

(9) Vendor--An entity or a person that can sell basic specialized telecommunication equipment or services as defined under this program, and is registered as such with the PUC.

(10) Voucher--A document of record which is issued to eligible applicants with the program and which can be exchanged with a vendor for equipment listed on the face of the voucher and which guarantees payment of up to but not exceeding the amount specified for the listed equipment or services.

§109.407. Determination of Basic Equipment or Service.

(a) In determining basic equipment or services available for voucher exchange, the following criteria shall be applied:

(1) The equipment or service must be for the purpose of telephone access;

(2) The equipment or service must mainly apply to telephone access functions and not to daily living functions unless such equipment or service for daily living functions enables an individual to access the telephone network and is less expensive than equipment or service that mainly applies to telephone access functions; and

(3) The service must be less expensive than the basic specialized telecommunications equipment approved for a voucher under this program and able to meet the same need.

(b) A list of available equipment or services will be maintained by DHHS.

(c) Additional equipment or services added to the list in subsection (b) of this section after July 1, 2000, shall meet the criteria specified in subsection (a) of this section.

§109.409. Eligibility.

To be eligible for assistance from this program an individual must:

(1) be a resident of Texas;

(2) be a person with a disability that interferes with the person's ability to access the telephone network;

(3) be in a situation where no other individual in the household with the same type of disability needing the same type of equipment has received a voucher for equipment unless individuals in the household are financially independent of each other;

(4) not have received a voucher for any specialized telecommunications equipment or services before the 5th anniversary of the date the individual exchanged the previously issued voucher under this program, unless before that date, the individual develops a need for a different type of telecommunications equipment or service under this program because the individual's disability status changes; and

(5) be able to benefit from the specialized telecommunications equipment or service provided by the voucher.

§109.411. Entities Authorized to Certify Disability.

(a) An applicant must be certified as a person with a disability which interferes with the person's ability to access the telephone network. The following can serve as certifiers:

(1) licensed hearing aid specialist;

(2) licensed audiologist;

(3) licensed physician;

(4) DARS rehabilitation counselor, or DHHS approved state or federal employee, or DHHS approved state or federal contractor;

(5) state certified teacher of individuals who are deaf or hard of hearing;

(6) licensed speech pathologist;

(7) state certified teacher of individuals who are visually impaired;

(8) state certified teacher of individuals who are speech impaired;

(9) state certified special education teacher;

(10) STAP specialist as named in a DHHS STAP Outreach and Training contract, or DHHS-approved Resource Specialist; or

(11) licensed social worker.

(b) By certifying an application, a certifier is attesting to:

(1) being eligible to certify under the provisions of the program;

(2) having personally met with and assessed the applicant's disability to determine that the applicant is eligible, in accordance with the program eligibility criteria;

(3) having reviewed the information on the application to ensure that the form is completed properly and all requested information has been provided; and

(4) having determined that the applicant will be able to benefit for access to the telephone network system from the specialized telecommunications equipment or services requested on the application.

(c) An application must be certified before DHHS can process and approve the application and issue the voucher.

§109.413. Vouchers.

(a) Eligible applicants will be issued an individually numbered voucher with a specified dollar value to be used towards the purchase of the specialized telecommunications equipment or service that must be listed on the voucher.

(b) Vouchers are non-transferable and have no cash value.

(c) Vouchers will expire on the date stated on the voucher.

§109.415. Determination of Voucher Value.

(a) This program provides financial assistance to eligible persons with a disability to enable the persons to purchase a basic specialized telecommunications equipment or service which will provide telephone network access. The value of each voucher is based on the cost of the basic equipment or service necessary to enable the applicant to access the telephone network. The value of the voucher will be determined by DHHS.

(b) Voucher values will be reviewed at least annually.

§109.417. Consumer Confidentiality.

Consumer confidentiality provisions applicable to the program are contained in Chapter 101, Subchapter A, §101.119 of this title (relating to Confidentiality of Consumer Information in the Specialized Telecommunications Assistance Program).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 30, 2007.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



CHAPTER 109. DEAF AND HARD OF HEARING SERVICES

The Texas Health and Human Services Commission proposes amendments to the rules of the Department of Assistive and Rehabilitative Services in Title 40, Part 2, Chapter 109, concerning Deaf and Hard of Hearing Services. This proposal repeals Subchapter B, Division 7, Certified Court Interpreters, §§109.901, 109.903, 109.905, 109.907, 109.909, 109.911, 109.913, 109.915, 109.917, 109.919, 109.921, 109.923, 109.925, 109.927, 109.929, and 109.931. A new Subchapter C, Certified Court Interpreters, §§109.301, 109.303, 109.305, 109.311, 109.313, 109.315, 109.321, 109.323, 109.325, 109.327, 109.329, 109.331, 109.333, 109.335, 109.337, 109.339, 109.341, 109.351, 109.353, 109.361, 109.363, 109.365, 109.367, 109.371, and 109.373, replaces the repealed sections.

The repeal and new rules are being proposed to conform the rules concerning certified court interpreters to current provisions of the Human Resources Code, Chapter 81, as amended through the 78th Legislative Session and as currently implemented following consolidation of the former Texas Commission for the Deaf and Hard of Hearing into the Department of Assistive and Rehabilitative Services; to provide updated information

necessary for persons seeking to obtain and persons holding certification as court interpreters; and to remove details of program administration that do not affect applicants for and holders of court interpreter certification. In addition, as Government Code §57.027(a) provides that a person commits an offense if the person violates a rule adopted under Government Code Chapter 57, Subchapter B, the replacement rules clearly identify which of the rules are adopted under Government Code Chapter 57, Subchapter B and subject to §57.027(a). Finally, the replacement rules establish a new requirement that an individual may not interpret a court proceeding or deposition unless properly qualified as court interpreter for that particular case, by presenting to the judge presiding, or to the court reporter at a deposition, proper evidence of court interpreter certification by either the Department or by the Registry of Interpreters for the Deaf. This new requirement is identified in the replacement rules as being adopted under Government Code Chapter 57, Subchapter B.

Elsewhere in this issue of the *Texas Register*, Department of Assistive and Rehabilitative Services contemporaneously proposes changing the title of Chapter 109 from "Deaf and Hard of Hearing Services" to "Office for Deaf and Hard of Hearing Services."

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the repeal and new rules will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the repeal and new rules will be in effect, the public benefit anticipated as a result of adopting the proposed repeal and new rules will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the proposal. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposal will not affect a local economy.

Comments on the proposal may be submitted to Barbara M. Lazard, Assistant General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756.

SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION

DIVISION 7. CERTIFIED COURT INTERPRETERS

40 TAC §§109.901, 109.903, 109.905, 109.907, 109.909, 109.911, 109.913, 109.915, 109.917, 109.919, 109.921, 109.923, 109.925, 109.927, 109.929, 109.931

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner

of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§109.901. Scope.

§109.903. Grandfathering of Current Court Interpreters.

§109.905. List of CART Providers.

§109.907. Court Certification Equivalency.

§109.909. Court Interpreter Services Fees for the Deaf and Hard of Hearing.

§109.911. Licensing Requirements--Examinations.

§109.913. Training and Qualifications to Take Examination.

§109.915. Approval of Courses of Instruction and Mentors.

§109.917. Licensing Requirements; Renewal.

§109.919. Responsibilities of Certified Court Interpreter--General.

§109.921. Fees for Court Interpreters.

§109.923. Sanctions--Administrative Sanctions/Penalties.

§109.925. Actions Against Persons not Certified as Court Interpreters.

§109.927. Disciplinary Actions.

§109.929. Disciplinary Guidelines.

§109.931. Continuing Education for Court Interpreters.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES SUBCHAPTER C. CERTIFIED COURT INTERPRETERS

**40 TAC §§109.301, 109.303, 109.305, 109.311, 109.313,
109.315, 109.321, 109.323, 109.325, 109.327, 109.329,
109.331, 109.333, 109.335, 109.337, 109.339, 109.341,
109.351, 109.353, 109.361, 109.363, 109.365, 109.367,
109.371, 109.373**

The new rules are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§109.301. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Certified court interpreter--Means an individual who is a qualified interpreter as defined in Article 38.31, Code of Criminal

Procedure, or §21.003, Civil Practice and Remedies Code, or certified under Subchapter B of this chapter by the Department of Assistive and Rehabilitative Services to interpret court proceedings for a hearing-impaired individual.

(2) Department--The Department of Assistive and Rehabilitative Services (DARS).

(3) Commissioner--Means the commissioner of the Department of Assistive and Rehabilitative Services.

(4) Director--Means the Director of the Office for Deaf and Hard of Hearing Services.

(5) Hearing-impaired individual--An individual who has a hearing impairment, regardless of whether the individual also has a speech impairment that inhibits the individual's comprehension of proceedings or communication with others.

(6) Office--The Office for Deaf and Hard of Hearing Services, Division for Rehabilitation Services.

(7) Communication access realtime translation services--Is the instant translation of the spoken word into English text using a stenotype machine, notebook computer and realtime software, with the text appearing on a monitor or other display.

(8) Court proceeding--Includes an arraignment, deposition, mediation, court-ordered arbitration, or other form of alternative dispute resolution.

§109.303. Requirements for Interpreting Court Proceedings in Courts of the State of Texas.

(a) The provisions of this subchapter apply to all proceedings of Texas courts, including county, municipal, and justice courts. They do not apply to federal court proceedings.

(b) A person interpreting court proceedings in Texas courts must hold a current legal certificate issued by the Registry of Interpreters for the Deaf or a current court interpreter certificate issued by the Board for Evaluation of Interpreters of the Department of Assistive and Rehabilitative Services.

(c) Source: Civil Practice and Remedies Code, §21.003; Code of Criminal Procedure, Art. 38.31(g).

(d) Authority: Government Code, §§57.026, 57.027(a), 57.027(b).

§109.305. Responsibilities of Certified Court Interpreters.

(a) A certified court interpreter must provide the following written notification to the court: "Certified by the Department of Assistive and Rehabilitative Services, Office for Deaf and Hard of Hearing Services. Complaints about the services provided by this person may be presented to the Office at P.O. Box 12904, Austin, Texas 78711." The notification shall also be included on all contracts and invoices for court interpreter services.

(b) In addition to the presentation of an individual's court interpreter certification card, which is required for qualification as a court interpreter for a particular case under §109.323 of this title (relating to Qualifications of Certified Court Interpreters), certified court interpreters shall present their court interpreter certification card upon the request of a court or an officer of the court.

(c) A certified court interpreter shall notify the Office, in writing, within thirty (30) days of any change in the certified court interpreter's name, address, or telephone number.

(d) Failure by certified court interpreters to satisfactorily fulfill these responsibilities may be grounds for administrative sanctions by the Department under Government Code §57.022(b)(8).

(e) Authority: Government Code, §§57.021(a), 57.022(b)(8), 57.027(b).

§109.311. Obtaining Documents and Information from the Office.

(a) Documents and other information concerning court interpreter certification that are identified as being available from the Office, may be obtained from the Department of Assistive and Rehabilitative Services, Office for Deaf and Hard of Hearing Services, 4900 North Lamar Blvd., Austin, Texas 78751-2399, or by calling the DARS Inquiries Unit, toll-free, 1-800-628-5115.

(b) Authority: Human Resources Code, §81.006(b)(3).

§109.313. Lists of Qualified Court Interpreters and Providers of Communication Access Realtime Translation Services.

(a) The department maintains lists of certified court interpreters and other persons the department has determined are qualified to act as court interpreters, and of persons identified by the Texas Court Reporters Association as being certified and qualified to provide communication access realtime translation services for a hearing-impaired individual in a court proceeding. Copies of these lists will be provided by the Office upon request.

(b) The lists of certified court interpreters and other persons the department has determined are qualified to act as court interpreters are sent by the Office to each state court.

(c) Authority: Government Code, §57.021(c), §57.021(d).

§109.315. Gifts, Grants, or Donations.

(a) The department may accept gifts, grants, or donations from private individuals, foundations, or other entities to assist in administering the court interpreter certification program. Contact the Director, Office for Deaf and Hard of Hearing Services, Department of Assistive and Rehabilitative Services, 4900 N. Lamar Blvd., Austin, Texas 78751, (512) 407-3250 (V) or (512) 407-3251 (TTY).

(b) Authority: Government Code, §57.021(e).

§109.321. Certification.

(a) The department will certify an applicant who passes the appropriate examination prescribed by the department and who possesses the other qualifications required by the rules in this subchapter.

(b) Authority: Government Code, §57.022(a).

§109.323. Qualifications of Certified Court Interpreters.

(a) In each civil case, deposition, or criminal action in Texas courts for which an individual will interpret testimony, the individual must be qualified as court interpreter for that particular case before commencing to interpret testimony.

(b) An individual shall not interpret a court proceeding or deposition unless properly qualified under this subsection as court interpreter for that particular case. In order to be qualified as court interpreter for a particular case, the individual must present to the judge presiding, or to the court reporter at a deposition, either:

(1) a current card issued by the Department of Assistive and Rehabilitative Services, Division for Rehabilitation Services, Board for Evaluation of Interpreters, stating that the individual is certified as a court interpreter; or

(2) a current membership card issued in the name of the individual by the Registry of Interpreters for the Deaf, Inc., 333 Commerce Street, Alexandria, VA 22314, carrying the designations "Certified" and "SC:L."

(c) An applicant to become a court interpreter must hold at least one BEI certification at Level III, IV, V, IIIi, IVi, Vi, Advanced, Master or Oral: Comprehensive, or certification through RID as a CSC,

CI/CT, RSC, CDI, or MCSC, or NIC Advanced or Master, and pass an examination on legal and court procedure skills and knowledge.

(d) Training and Qualifications to Take Examination.

(1) Prior to taking the court interpreter examination, an applicant must provide to the Office proof that the applicant has completed instruction in court interpretation in one of the following methods:

(A) Completion of approved courses of instruction in courtroom interpretation knowledge and skills with not less than 120 hours of classroom instruction;

(B) Mentoring for not less than 120 hours of actual practice by a certified court interpreter who has been approved to act as a mentor; or

(C) A combination of instruction and mentoring totaling 120 hours.

(2) The current list of approved courses of instruction in courtroom interpretation skills and training programs for interpreters applying for Court Interpreter Certification or certified court interpreters needing continuing education unit credits may be obtained from the Department of Assistive and Rehabilitative Services, Office for Deaf and Hard of Hearing Services, 4900 North Lamar Blvd., Austin, Texas 78751-2399, or by calling the DARS Inquiries Unit, toll-free, 1-800-628-5115.

(e) Authority: Government Code, §§57.022(b)(1), 57.027(a), 57.027(b).

§109.325. Training Programs for Certified Court Interpreters Managed by the Department or by Public or Private Educational Institutions.

(a) Approval of Courses of Instruction and Mentors.

(1) A person intending to teach court interpretation must submit to the Office a written course outline and materials to be used in the course of instruction to the Office.

(2) The Office will review the proposed course outline and materials and make a determination on whether it should be approved.

(3) Instructors must hold either Court Interpreter Certification issued by the department or be a licensed attorney or paralegal, or be otherwise found to be qualified as an instructor by the Office.

(4) A person intending to be a mentor shall apply to the Office on a form to be provided by the Office.

(5) To be a mentor for court interpreting, the person shall have the following qualifications:

(A) Meet the requirements for and hold Court Interpreter Certification issued by the department or RID SC:L for a period of not less than one year;

(B) Pass an examination on legal and court procedure skills; and

(C) Not have been subject to disciplinary action in the previous two years.

(6) Mentors shall conform to a course of training prescribed by the Office.

(b) The department may contract with public or private educational institutions, and other entities, to administer training programs. In accordance with Government Code, §57.021(b), the department will suspend training offered by an institution if the training fails to meet the requirements established by the department.

(c) Authority: Government Code, §§57.021(b), 57.022(b)(2), 57.027(a), 57.027(b).

§109.327. Administration of Examinations.

(a) General.

(1) In accordance with Government Code, §57.023, the department will prepare examinations under this subchapter that test an applicant's knowledge, skill, and efficiency in the field in which the applicant seeks certification.

(2) A person who fails an examination may apply for reexamination at the next examination scheduled after the date the person failed the original examination.

(3) Examinations will be offered in the state at least twice a year at times and places designated by the department. The current schedule of times and places for examinations may be obtained from the Office.

(b) Examination on legal and court procedure skills and knowledge.

(1) A passing grade on the examination is 80 percent.

(2) The examinations will be administered to applicants with content and format determined by the Office.

(3) Subject to the following provisions, an applicant may request an accommodation in accordance with the Americans with Disabilities Act.

(A) The request must be in writing.

(B) Proof of disability and the limiting factors of the disability may be required.

(4) An applicant who does not attend a scheduled examination will forfeit the examination fee. An applicant may attend a future examination without payment of additional fee upon proof of the following:

(A) Illness of the person or an immediate family member whom the person is required to attend; or

(B) Documented evidence that the applicant was unable to attend the examination due to reasons beyond his or her control.

(5) Certification is effective for a period of 5 years from the date of certification.

(6) Cheating on an examination is grounds for denial, suspension, or revocation of a certification and/or an administrative penalty.

(c) Authority: Government Code, §§57.022(b)(3), 57.023, 57.027(a), 57.027(b).

§109.329. Form for Certificates.

(a) Upon successful completion of all requirements for certification and approval by the Office, the applicant shall be issued a card evidencing certification as a court interpreter.

(b) Authority: Government Code, §§57.022(b)(4), 57.027(a), 57.027(b).

§109.331. Procedures for Renewal of a Certificate.

(a) A complete application for certification renewal and all required fees must be filed by the expiration date, or the application will be considered late and the certification will expire.

(b) Nonreceipt of a certification renewal notice from the Office does not exempt a person from any requirements of this chapter.

(c) A person with an expired certification shall not perform work requiring a certification under Chapter 57 of the Texas Government Code.

(d) A certification that has expired for a period of less than one year may be reissued when the person with the expired certification meets the conditions of a certification renewal, as outlined in this section, and pays required fees, including the renewal fee and the late renewal fee.

(e) Authority: Government Code, §§57.022(b)(4), 57.027(a), 57.027(b).

§109.333. Fees for Training, Examinations, Initial Certification, and Certification Renewal.

(a) The Office has established fees to charge interpreters for training, examinations, initial certification, and certification renewal to defray the cost of conducting these activities. The current schedule of charges is published on the website of the Office, <http://www.dars.state.tx.us/dhhs/index.shtml>, and is available in hard copy from the Office. All fees are nonrefundable.

(b) Authority: Government Code, §§57.022(b)(5), 57.027(a), 57.027(b).

§109.335. Continuing Education Programs Required for Court Interpreter Initial Certification or Certification Renewal.

(a) The Office recognizes, prepares, and/or administers continuing education programs for certified interpreters. A certified interpreter must participate in the programs to the extent required by the Office to keep the person's certificate. Current requirements for continuing education, and announcements of current training opportunities, may be obtained from the Office.

(b) Authority: Government Code, §§57.022(b)(6), 57.027(a), 57.027(b).

§109.337. Instructions for the Compensation of a Certified Court Interpreter and Designation of the Party or Entity Responsible for Payment of Compensation.

(a) In accordance with Civil Practice and Remedies Code, §21.006 and HB 2292, 78th Legislature (RS), §1.21, the court interpreter in civil cases and depositions shall be paid a reasonable fee determined by the court after considering the recommended fees of the Department of Assistive and Rehabilitative Services. If the interpreter is required to travel, the interpreter's actual expenses of travel, lodging, and meals relating to the case shall be paid at the same rate provided for state employees. The interpreter's fee and expenses shall be paid from the general fund of the county in which the case was brought.

(b) In accordance with Code of Criminal Procedure, Article 38.31(f), and HB 2292, 78th Legislature (RS), §1.21, interpreters appointed in criminal actions, to include arraignments, hearings, examining trials, and trials, are entitled to a reasonable fee determined by the court after considering the recommendations of the Department of Assistive and Rehabilitative Services. When travel of the interpreter is involved, all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case he or she is appointed to serve shall be paid at the same rate applicable to state employees.

(c) Under the authority of the Texas Code of Criminal Procedure Art. 38.31(f), Texas Government Code, §57.022(b)(7), and the Civil Practice and Remedies Code, §21.006, the Office establishes recommended fees for the payment of interpreter services for persons who are deaf or hard of hearing which must be provided in proceedings of state agencies; state, county, and municipal civil and criminal courts; and political subdivisions.

(d) These fees may be reviewed and/or revised as deemed necessary by the Office. The schedule of fees and any changes will be posted on the Office website and are available upon request.

(e) A court's funding jurisdiction is required to pay for the interpreter services utilized for all court proceedings.

(f) The parties to either a civil or criminal proceeding may not be assessed the costs of court interpreter services. The cost of interpreter services shall not be charged to the individual or individuals requesting or requiring the court interpreter services.

(g) Authority: Government Code, §§57.022(b)(7), 57.027(a), 57.027(b).

§109.339. Administrative Sanctions Enforceable by the Department.

(a) If a person violates any provision of Title 2, Texas Government Code, Chapter 57, the provisions of Texas Human Resources Code, Chapter 81 (relating to the Texas Commission for the Deaf and Hard of Hearing), any provision of Subchapter B of this chapter, or any provision of an order of the Director or Office, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with Texas Human Resources Code, Chapter 81 or Texas Government Code, Chapter 57.

(b) Authority: Government Code, §57.022(b)(8), §57.027(b).
§109.341. Code of Professional Conduct.

(a) The CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITY OF CERTIFIED COURT INTERPRETERS of the Division for Rehabilitation Services, Office for Deaf and Hard of Hearing Services, shall govern the professional conduct of court interpreters certified under this subchapter. Willful violation of the CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITY OF CERTIFIED COURT INTERPRETERS is grounds for suspension or revocation of certification under §109.243(a) and §109.351 of this title (relating to Grounds for Denying, Suspending, or Revoking an Interpreter's Certificate and Denial, Suspension, or Revocation of Certificate). Copies of the CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITY OF CERTIFIED COURT INTERPRETERS may be obtained from the Office.

(b) Authority: Human Resources Code, §81.006(b)(3), §81.007(h).

§109.351. Denial, Suspension, or Revocation of Certificate.

(a) The grounds for denying, suspending, or revoking a court interpreter's certificate are the same grounds as for denying, suspending, or revoking an interpreter's certificate pursuant to the Board for Evaluation of Interpreters of the Department of Assistive and Rehabilitative Services procedures set forth in §109.243 of this title (relating to Grounds for Denying, Suspending, or Revoking an Interpreter's Certificate).

(b) The department may revoke or suspend certification under this subchapter only after a hearing. The department may reissue a certificate to a person whose certificate has been revoked if the person applies in writing to the department and shows good cause to justify reissuance of the certificate. Copies of procedures for hearings to revoke and suspend certificates, and for submitting applications for reissuance after revocation of a certificate, may be obtained from the Office.

(c) Authority: Government Code, §57.025.
§109.353. Disciplinary Actions.

(a) The Office shall take disciplinary action against a certificate holder who is found to be in violation of a law or rule of the Office.

A disciplinary action may be composed of any one or combination of the following listed in paragraphs (1) - (6) of this subsection:

- (1) revocation of a certification;
- (2) suspension of a certification;
- (3) probation of a suspended certification;
- (4) refusal to renew a certification;
- (5) issuance of a formal or informal reprimand; or
- (6) assessment of an administrative penalty under the law.

(b) All disciplinary actions issued by the Office will take the form of an Office order. All disciplinary actions shall be permanently recorded and made available upon request as public information. Except for an informal reprimand, all disciplinary actions may be released in a press release, and shall be transmitted to the RID.

(c) A court interpreter whose certification has expired for non-payment of renewal fees continues to be subject to all provisions of the Act and Office rules governing certified court interpreters until the certification is revoked by the Office or becomes nonrenewable under the law.

(d) Criminal convictions shall be handled as shown in paragraphs (1) - (3) of this subsection:

(1) The Office shall follow the requirements of Texas Occupations Code, §53.021, and shall revoke the certification of any court interpreter incarcerated as a result of a felony conviction, or violation of felony probation or parole, or revocation of mandatory supervision subsequent to being certified as a court interpreter.

(2) The Office may take any of the actions set out in subsection (a) of this section when a court interpreter is convicted of a misdemeanor or a felony without incarceration if the crime directly relates to the certification holder's duties and responsibilities as a certified court interpreter.

(3) Any court interpreter whose certification has been revoked under the provisions of this subsection may apply for a new certification upon release from incarceration, but the application shall be subject to additional scrutiny relating to the incarceration. Such scrutiny shall be in accordance with Texas Occupations Code, §53.021.

(e) Authority: Government Code, §57.022(b)(8).

§109.361. Prohibited Acts.

(a) A person may not interpret for a hearing-impaired individual at a court proceeding or advertise or represent that the person is a certified court interpreter unless the person holds a current legal certificate issued by the Registry of Interpreters for the Deaf or a current court interpreter certificate issued by the Board for Evaluation of Interpreters of the Department of Assistive and Rehabilitative Services.

(b) Violation of the prohibition in this section is a Class A misdemeanor offense under Government Code, §57.027(a), and may, in addition subject the violator to an administrative penalty assessed by the department under Government Code, §57.027(b) and §109.339 of this title (relating to Administrative Sanctions Enforceable by the Department).

(c) Authority: Government Code, §57.026.

§109.363. Enforcement.

(a) The commissioner shall investigate allegations of violations, and shall enforce this subchapter. Allegations concerning violations of this subchapter should be forwarded, in writing, to Director, Office for Deaf and Hard of Hearing Services, 4900 North Lamar Blvd., Austin, Texas 78751.

(b) Authority: Government Code, §57.024.

§109.365. Criminal Offense.

(a) Government Code, §57.027(a) provides that a person commits an offense if the person violates Government Code Chapter 57, Subchapter B, pertaining to court interpreters for hearing impaired individuals, or a rule adopted under the subchapter. An offense under Government Code, §57.027(a) is a Class A misdemeanor.

(b) Sections 109.303, 109.323, 109.325, 109.327, 109.329, 109.331, 109.333, 109.335, 109.337 and 109.361 of this subchapter (relating to Certified Court Interpreters) are adopted under the provision of law described in subsection (a) of this section, and violations are subject to criminal penalties. In addition, violations of the provisions of §109.303 and §109.361 of this subchapter would constitute direct violations of Government Code, §57.026, and would also be subject to criminal penalties under Government Code, §57.027(a).

(c) Authority: Government Code, §57.027(a).

§109.367. Actions Against Persons Not Certified as Court Interpreters.

(a) The Office shall investigate complaints and take action against a person alleged to perform court interpretation without certification or authorization as provided by this subchapter. The following investigative process and resulting action listed in paragraphs (1) - (3) of this subsection will be followed by the Office to ensure affected individuals are afforded due process of law.

(1) Upon receipt of a formal or staff-initiated complaint, the information will be evaluated to determine if the evidence provides sufficient probable cause that a violation may have occurred.

(2) If sufficient probable cause does not exist, an investigation will not be initiated.

(3) If sufficient probable cause is found, then an investigation will be initiated by the Office staff to determine if a violation of law has occurred. The Office's investigative process will be as follows.

(A) The individual or firm will be advised of the complaint and the specific section of the Act which appears to have been violated. If the initial evidence is sufficiently strong, the Director may offer the respondent a consent order that, if accepted, will be presented to the Office for acceptance or rejection. The consent order shall include an administrative penalty not inconsistent with §109.339 of this title (relating to Administrative Sanctions Enforceable by the Department) and a compliance requirement. The respondent shall be fully informed of the range of penalties allowed under criminal, civil, and administrative proceedings.

(B) The respondent will be afforded the opportunity to respond to the complaint to show that the actions which precipitated the complaint are not in violation of the Act, or to accept the consent order.

(C) If, after evaluation of the respondent's response a violation appears evident, the respondent will be afforded the opportunity to resolve the allegations informally in the same manner prescribed for certification holders in §109.353 of this title (relating to Disciplinary Actions).

(D) Any Office action under this paragraph which is not informally disposed by agreement or consent order will be considered a contested case and will be handled in accordance with applicable law and Office rules.

(b) Authority: Government Code, §57.022(b)(8).

§109.371. Court Interpreter Qualifications in Civil Cases or Depositions Pursuant to Civil Practice and Remedies Code.

(a) A court interpreter in a civil case or deposition in Texas courts must hold a current legal certificate issued by the Registry of Interpreters for the Deaf or a current court interpreter certificate issued by the Board for Evaluation of Interpreters of the Department of Assistive and Rehabilitative Services.

(b) Source: Civil Practice and Remedies Code, §21.003.

§109.373. Court Interpreter Qualifications in Criminal Actions Pursuant to Code of Criminal Procedure.

(a) A qualified interpreter in criminal actions in Texas courts, to include arraignments, hearings, examining trials, and trials, for a person who has a hearing impairment that inhibits the person's comprehension of the proceedings or communication with others, must hold a current legal certificate issued by the Registry of Interpreters for the Deaf or a current court interpreter certificate issued by the Board for Evaluation of Interpreters of the Department of Assistive or Rehabilitative Services.

(b) Source: Code of Criminal Procedure, Art. 38.31(g).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 30, 2007.

TRD-200701688

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Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: June 10, 2007

For further information, please call: (512) 424-4050



PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.308 - 700.311, 700.314 - 700.321, 700.323 - 700.325, 700.327 - 700.333, and 700.345; the repeal of §700.322 and §700.334; and new §700.346, concerning Subchapter C, Eligibility for Child Protective Services, in its Child Protective Services chapter. The purpose of the amendments, repeals and new section is to: (1) allow youth who have aged-out of foster care to return to a DFPS-paid foster care placement to complete their educational goals; (2) ensure that the rules for foster care assistance are consistent with applicable legal requirements, including provisions of the state plan for Medical Assistance and the Texas Family Code; and (3) update the agency name and make minor editorial changes.

Section 700.316 is revised to allow youth who have aged-out of foster care to return to a DFPS-paid foster care placement to complete their educational goals. The return to care category is added as a population that is eligible for foster care assistance; the eligibility requirements for return to care are clarified; and the type of foster care assistance for return to care is listed. The revisions also make the terminology consistent with other provisions

of Subchapter C, Eligibility for Child Protective Services; clarify the general eligibility for IV-E or state-paid foster care assistance; and consolidate various provisions related to Medical Assistance Only (MAO). Section 700.322 and §700.334 are deleted and relevant information is incorporated into §700.316.

Section 700.320 is revised to clarify that eligibility in medical facility placement is limited to MAO, update the agency name, make the terminology consistent with the rest of Subchapter C, and clarify the type of proceedings referenced by this rule.

Section 700.333 is revised to make the references to MAO uniform.

New §700.346 lists the criteria that a youth must meet to return to a foster care setting.

The following sections are revised to update the agency name, delete unnecessary language and obsolete provisions, update terminology, and make other minor clarifications: §§700.308 - 700.311, 700.314, 700.315, 700.317 - 700.319, 700.321, 700.323 - 700.325, 700.327 - 700.332, and 700.345.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The change to allow youth who have aged-out of foster care to return to a paid foster care placement in order to complete their educational goals, will result in an increased number of youth in a paid foster care setting each year. It is anticipated that the increased number of youth in a paid foster care setting will be 40 in fiscal year 2008; 80 in fiscal year 2009; 160 in fiscal year 2010; 170 in fiscal year 2011; and 180 in fiscal year 2012. The effect on state government for the first five-year period that the changes will be in effect is estimated to cost \$634,689 for fiscal year 2008; \$1,539,863 for fiscal year 2009; \$2,993,759 for fiscal year 2010; \$3,999,594 for fiscal year 2011; and \$4,271,374 for fiscal year 2012. The increased workload resulting from this change to the rules will be absorbed by existing staff. There will be no fiscal implications for local government.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that youth who have aged out of foster care will be able to return to an environment where they can obtain self-sufficiency through furthering their education. It will also decrease truancy, dropout rates, and associated risk behaviors. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Larry Burgess at (512) 438-5320 or Candice Holmes at 438-2350 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-363, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed amendments, new section, and repeals do not restrict or limit an owner's right to his or

her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

40 TAC §§700.308 - 700.311, 700.314 - 700.321, 700.323 - 700.325, 700.327 - 700.333, 700.345, 700.346

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement the Texas Family Code, §264.101 and §264.121.

§700.308. Right to [To] Refuse Services and Consequences of Refusal.

(a) A parent's absence or refusal to accept services offered by the Texas Department of Family and Protective [and Regulatory] Services (DFPS) [(PRS)] does not change DFPS's [PRS's] legal responsibility to protect children. Parents must not be coerced or defrauded into accepting services but must be notified of the steps DFPS [PRS] may take to protect the children if the parents refuse services.

(b) Parents have the right to refuse services offered by DFPS [PRS] unless a court has ordered the services.

(c) If parents refuse to allow DFPS [PRS] to investigate, DFPS [PRS] may request the county or district attorney to petition the court for an order that requires the parents to allow the investigation. If the allegation of abuse or neglect or other information available to DFPS [PRS] indicates immediate danger to the child, DFPS [PRS] may also seek a court order to remove the child from the home.

§700.309. Administrative Reviews of Client Complaints.

Child protective services clients have the right to an administrative review of any complaint about the Texas Department of Family and Protective [and Regulatory] Services' child protective services. When clients make a complaint, staff inform the clients that they may request an administrative review. An administrative review is conducted by staff at a higher level than the worker within a reasonable time after the client requests the review.

§700.310. Fair Hearings.

(a) Child protective services clients have the right to a fair hearing if services they request are denied, reduced, or terminated or if the Texas Department of Family and Protective [and Regulatory] Services (DFPS) [(PRS)] does not act on their request for services with reasonable promptness.

(b) When DFPS [PRS] staff informs a client that requested services have been denied, reduced, or terminated or will not be provided with reasonable promptness, staff must also inform the client:

(1) that the client may request a fair hearing to question DFPS [PRS] action;

(2) - (3) (No change.)

(c) If requested, DFPS [PRS] staff assists the client in completing the form for requesting a fair hearing.

§700.311. Eligible Individuals.

(a) Children and their families are eligible for services to prevent abuse and neglect and to avoid having to remove children from their homes, services to remove children in danger of harm, and services to reunify families when both of the following two conditions are satisfied.

(1) (No change.)

(2) The case meets the criteria for providing services in at least one of the following sections and subchapters:

(A) (No change.)

(B) Subchapter G of this chapter (relating to ~~[Family Preservation] Services for Families~~);

(C) - (D) (No change.)

(b) (No change.)

§700.314. Authorization and Reauthorization of Services.

To receive purchased child protective services, a client must be authorized for the service by the Texas Department of ~~Family and Protective~~ [and Regulatory] Services.

§700.315. Foster Care Assistance ~~[Maintenance Resources]~~.

(a) There are three types of foster ~~[Foster]~~ care assistance provided to eligible children in the conservatorship of DFPS, or in DFPS care pursuant to §700.316(a)(1)(D) and (E) of this title (relating to General Eligibility Requirements for Foster Care Assistance): ~~[is financial and medical coverage provided by Title IV-E foster care, medical assistance only (MAO) foster care, or state-paid foster care. All other financial resources to which a child is entitled must be used before Title IV-E, MAO, or state-paid foster care is used to pay for the cost of a child's foster care.]~~

(1) Title IV-E foster care assistance;

(2) State-paid foster care assistance; and

(3) Medical Assistance Only (MAO).

(b) The Title IV-E foster care assistance [is a] program provides foster care maintenance payments and Medicaid coverage to [for] children who meet the requirements contained in §700.316 of this title and §700.317 of this title (relating to Additional Eligibility Requirements for Title IV-E Foster Care Assistance [for the foster care assistance program funded by Title IV-E of the Social Security Act. Program benefits include Medicaid coverage and foster care payments].

(c) The state-paid foster care assistance program provides foster care maintenance payments and Medicaid coverage to children who meet the requirements contained in §700.316 of this title and §700.318 of this title (relating to Additional Eligibility Requirements for State-Paid Foster Care Assistance) but are not eligible for Title IV-E foster care assistance [Medical Assistance Only (MAO) foster care provides Medicaid benefits to needy children who meet the financial requirements but are not otherwise eligible for Title IV-E or state-paid foster care. The care for these children is provided at no cost to the Texas Department of Protective and Regulatory Services].

(d) MAO provides Medicaid benefits to children in DFPS's managing conservatorship who meet the requirements of §700.316(c) of this title but are not otherwise eligible for Title IV-E or state-paid foster care assistance [State-paid foster care provides foster care maintenance payments and Medicaid coverage to children who meet the requirements contained in §700.316 and §700.318 of this title (relating to Eligibility Requirements for Title IV-E, MAO, and State-paid Foster Care Assistance and Additional Eligibility Requirements for State-paid Foster Care Assistance)].

(e) All other financial resources to which a child is entitled must be used before any type of foster care assistance is used to pay for the cost of a child's foster care.

§700.316. General Eligibility Requirements for Foster Care ~~[Title IV-E, MAO, and State-Paid Foster Care] Assistance.~~

(a) The child or youth must meet all of the following criteria to be eligible for Title IV-E~~[, Medical Assistance Only (MAO),]~~ or state-paid foster care assistance.

(1) Responsibility for placement and care. The Texas Department of Family and Protective Services (DFPS) must have the responsibility for the child's placement and care. This requirement is met if:

(A) - (B) (No change.)

(C) The child lives with his minor parent, and the minor parent is in DFPS's managing conservatorship. The child and the minor parent must reside together in the same foster family home or residential child-care operation; ~~[or]~~

(D) The youth is in conservatorship immediately preceding his 18th birthday, and:

(i) (No change.)

(ii) lacks capacity and the Texas Department of Aging and Disability Services (DADS) has applied for and is granted guardianship; ~~[or]~~

(E) The youth qualifies as a return to care youth under §700.346 of this title (relating to Return to Foster Care).

(2) Age, educational, and vocational requirements.

(A) The child must be less than 18 years old; ~~[or]~~

(B) The youth qualifies as a return to care youth under §700.346 of this title; or

(C) ~~[(B)]~~ If a youth in foster care turns 18 years old, and is receiving foster care assistance, the youth's eligibility for foster care assistance ends on the last day of the month of his 18th birthday, unless one of the following conditions is satisfied:

(i) The youth is enrolled in and attending full time a high school or a program leading toward a high school diploma. In this case the youth's eligibility is extended until the end of the month the youth completes or withdraws from high school, or the end of the month in which the youth turns 22 years old, whichever comes first;

(ii) The youth has been accepted for admission to a college or vocational program that does not begin immediately. In this case the youth's eligibility is extended for a period not to exceed three and one-half months following the end of the month in which the youth graduates from high school or obtains a General Equivalence Diploma ("GED");

(iii) The youth is enrolled in and attending GED classes full time and is expected to complete the classes by his 19th birthday. In this case the youth's eligibility is extended until the end of the month the youth completes or withdraws from the classes, or the end of the month in which the youth turns 19 years old, whichever comes first;

(iv) The youth is enrolled in and attending full time a vocational or technical training program and is expected to complete the program before his 21st birthday. In this case the youth's eligibility is extended until the end of the month the youth completes or withdraws from the program, or the end of the month in which the youth turns 21 years old, whichever comes first; or

(v) The youth receives a GED, enrolls in a vocational or technical training program before his 18th birthday, and is expected to complete the program before or during the month of his 19th birthday. In this case the youth's eligibility for Title IV-E foster care eligibility is extended until the end of the month in which he completes or withdraws from the program, or the end of the month in which the youth turns 19 years old, whichever comes first.

(3) - (7) (No change.)

(8) Additional Requirements. The child must meet the additional requirements for Title IV-E or state-paid foster care assistance described in §§700.317, 700.318, and 700.346 of this title (relating to Additional Eligibility Requirements for Title IV-E Foster Care Assistance, Additional Eligibility Requirements for State-Paid Foster Care Assistance, and Return to Foster Care), as applicable.

(b) The following conditions determine the type of foster care assistance for which a youth qualifies if remaining in foster care past age 18 years:

(1) - (2) (No change.)

(3) If the youth is enrolled in and attending full time a vocational or technical training program and is not expected to complete the program by his 19th birthday, the youth's foster care may be extended as state-paid and may continue until the end of the month the youth completes or withdraws from the program, or the end of the month the youth turns 21 years old, whichever comes first; ~~or~~

(4) If the youth is eligible for the return to care program as specified under §700.346(a)(2)(A)(iii) of this title, the foster care is state-paid at the Basic Service Level, or the facility's lowest contracted rate;

(5) If the youth is eligible for the return to care program as specified under §700.346(a)(2)(A)(i) and (ii) of this title, the foster care is state-paid at the appropriate service level; or

(6) [(4)] If the youth is eligible for the extension of foster care assistance as specified in subsection (a)(2)(C)(ii) [(a)(2)(B)(ii)] of this section, the extension of foster care is state-paid at the appropriate service level [~~Basic Service Level or the facility's lowest contracted rate~~].

(c) In order to qualify for Medical Assistance Only (MAO), a child must meet the following requirements:

(1) DFPS must have responsibility for the child's placement and care, as defined in subsection (a)(1) of this section. The child may be in a licensed or unlicensed placement, as long as he or she remains in DFPS's managing conservatorship and is not receiving Medicaid through another program.

(2) The child must be under the age of 18 years.

§700.317. Additional Eligibility Requirements for Title IV-E Foster Care Assistance.

(a) Besides the general eligibility requirements specified in §700.316 of this title (relating to General Eligibility Requirements for [Title IV-E, MAO, and State-paid] Foster Care Assistance), a child must meet the following [additional] requirements to qualify for Title IV-E foster care assistance.

(1) Aid to Families with Dependent Children (AFDC)-related status. At least one of the following conditions must apply.

(A) - (B) (No change.)

(C) The child lives with his minor parent, and the minor parent is in the Texas Department of Family and Protective ~~[and Regulatory] Services'~~ (DFPS's) [(TDPRS's)] managing conservatorship.

As long as the child continues to live with the minor parent, a separate court-ordered removal is not required for the child to qualify for Title IV-E foster care assistance.

(D) (No change.)

(2) (No change.)

(3) Relationship and domicile. During the month in which court proceedings were initiated, or at some time during the six preceding months, the child must have lived with a relative who qualifies as a "specified relative" under 45 Code of Federal Regulations (CFR) §233.90(c)(v) [~~§233.90(e)(v)(A)(1)-(6)]~~.

(4) - (5) (No change.)

(b) For purposes of determining eligibility for foster care assistance, DFPS ~~[TDPRS]~~ considers court proceedings initiated when:

(1) - (2) (No change.)

§700.318. Additional Eligibility Requirements for State-Paid Foster Care Assistance.

(a) Besides the general requirements for foster care eligibility, a child must meet the following criteria to be eligible for state-paid foster care assistance:

(1) the child must not be eligible for Title IV-E foster care assistance;

[(2) the child must be placed in foster care after August 31, 1979;]

[(3) for children placed in foster care after August 31, 1979, and before June 16, 1981, a petition for termination of parental rights of one or both parents under the Texas Family Code, §161.001, must have been filed;]

(2) [(4)] the court order naming the Texas Department of Family and Protective ~~[and Regulatory] Services (DFPS)~~ (DFPS) ~~[(TDPRS)]~~ as the child's managing conservator must be issued under an article other than §161.001(1)(J)(i) and (ii) of the Texas Family Code; and[-]

(3) the ~~[The]~~ suit, resulting in DFPS ~~[TDPRS]~~ being named the managing conservator, must have been initiated on DFPS's ~~[TDPRS's]~~ behalf.

(b) (No change.)

§700.319. Effective Date of Eligibility.

A child is eligible for foster care assistance [aid to families with dependent children, medical assistance only, or state-paid foster care] on the earliest date that all applicable eligibility requirements are met.

§700.320. Eligibility in Medical Facilities before Placement.

(a) A child in a medical facility is eligible for [aid to families with dependent children (AFDC), medical assistance only (MAO), or state-paid foster care assistance] if:

(1) the child meets the general eligibility requirements specified in §700.316(c) ~~§700.316~~ of this title (relating to General Eligibility Requirements for [AFDC, MAO, and State-paid] Foster Care Assistance); and

[(2) both of the following conditions apply:]

[(A) The Texas Department of Protective and Regulatory Services (PRS) is responsible for the child's care and placement;]

(2) ~~[(B)]~~ DFPS ~~[PRS]~~ plans to place the child in a foster care facility as soon as the child leaves the medical facility. DFPS ~~[PRS]~~ must proceed with the planned placement unless the child dies in the medical facility or there is a change in the court order or some other event occurs that clearly precludes making the placement.

(b) If ~~removal [court]~~ proceedings are initiated during the month of the child's admission to the medical facility, the child's eligibility for foster care assistance commences on the date of admission. If ~~removal [court]~~ proceedings are not initiated until the following month, the child's eligibility commences on the first day of the month in which the proceedings are initiated.

§700.321. AFDC Domicile for Children Relinquished at Birth and Children Born to Incarcerated Mothers.

The Aid to Families with Dependent Children [Aid to families with dependent children] domicile requirement is met at the time of birth if the mother relinquishes her rights to the child or if the mother is incarcerated. Eligibility is effective the date of birth if all other eligibility requirements are met and court proceedings are initiated during the month of birth.

§700.323. Continuation of Foster Care Payments During Absences from Care.

(a) Under certain circumstances, the Texas Department of Family and Protective ~~[and Regulatory]~~ Services (DFPS) ~~[(TDPRS)]~~ will continue to make foster care payments to a provider on behalf of a child who is no longer in that provider's care, in order to reserve space for the child's anticipated return to that provider at a date in the near future. The maximum duration of continued payments to the provider during a child's absence is subject to the limitations set forth in this section.

(b) Payments to a provider for foster care during a child's absence will only be made if each of the following conditions are met:

(1) DFPS [TDPRS] plans to return the child to the provider at the end of the absence;

(2) (No change.)

(3) DFPS [TDPRS] is not making foster care payments on behalf of this same child to any other provider during the child's absence.

(c) If a child is temporarily absent from an emergency shelter or other provider contracted to provide emergency care, DFPS [TDPRS] may continue to pay the provider for not more than five additional days during the child's absence.

(d) If a child's temporary absence from non-emergency foster care is authorized by DFPS [TDPRS], DFPS [TDPRS] may continue to pay the foster care provider for not more than 30 days during the child's absence, unless a greater period of payment is approved by the Child Protective Services (CPS) program administrator. DFPS [TDPRS] may pay for not more than 90 days of care during a child's authorized absence if the CPS program administrator approves. In unusual circumstances, payments may continue for an authorized absence of longer than 90 days with prior written approval by the CPS director. If a child's temporary absence from non-emergency care is not authorized by DFPS [TDPRS], DFPS [TDPRS] may pay for not more than 15 additional days of care during the child's unauthorized absence.

§700.324. Re-determination of Foster Care Eligibility.

The Texas Department of Family and Protective Services (DFPS) must re-determine a child's eligibility for ~~[aid to families with dependent children (AFDC), medical assistance only (MAO), and state-paid]~~ foster care assistance:

(1) - (3) (No change.)

§700.325. Redetermination of Deprivation of Parental Support.

For Title IV-E [aid to families with dependent children] foster care assistance, the child must continue to be deprived of parental support. Deprivation of parental support is based on current circumstances in

the home from which the child was removed. Children whose parental rights have been terminated are considered permanently deprived of parental support effective the date of termination.

§700.327. Eligibility for Four Months of Medicaid Coverage Following Denial of Title IV-E [AFDC] Foster Care Assistance.

A child in foster care is eligible for Medicaid benefits for four calendar months after the denial of Title IV-E [aid to families with dependent children (AFDC)] foster care assistance if the child:

(1) was denied IV-E [AFDC] foster care assistance because of the child's earned income; and

(2) (No change.)

§700.328. Foster Care Maintenance [Assistance] Payments.

(a) To receive foster care maintenance ~~[assistance]~~ payments, private child care facilities must be approved by the Texas Department of Family and Protective ~~[and Regulatory]~~ Services (DFPS) ~~[(TDPRS)]~~ for participation.

(b) DFPS's [TDPRS's] foster care rates will be determined by the service level that the child needs, subject to adjustments based on the extent to which other services provided by outside parties meet the child's needs or on other factors consistent with the child's needs. In the rate structure, rates are based on analysis of cost reports and other pertinent financial and statistical information including statistics published by the United States Department of Agriculture (USDA) on the expenditures on a child by families. DFPS's [TDPRS's] determination of a child's service level is based upon the child's characteristics, as described in DFPS's [TDPRS's] application form, and the descriptions of service levels.

(c) Foster care maintenance ~~[assistance]~~ payments are intended to cover the child's basic needs, not the needs of the provider, unless meeting provider needs is necessary for meeting the child's needs. The rates for foster care payments are approved by the Health and Human Services Commission in accordance with 1 TAC §355.7103 (relating to Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements) [reviewed by the Texas Board of Protective and Regulatory Services annually in an open meeting, after considering pertinent financial and statistical information, TDPRS rate recommendations, other staff recommendations, the cost-finding methodology, public testimony, agency service demands, and the availability of appropriated revenue. Costs included in the rates are specified in §§700.1801-700.1806 of this title (relating to Cost Reporting, Cost-finding Analysis, Definition of Allowable and Unallowable Costs, Allowable Costs, Unallowable Costs, and Cost Not Included in Recommended Payment Rates)].

(d) To participate in DFPS's [TDPRS's] foster care assistance program, all DFPS [TDPRS] and non-DFPS [non-TDPRS] families and private, nonprofit and for-profit facilities, group homes, and child-placing agencies must complete a contract or agreement with DFPS [TDPRS]. The contract or agreement must be signed by the foster care provider and DFPS [TDPRS] and will be in effect for a designated period stated in writing in the contract or agreement. At the expiration of this period, the contract will continue according to its then-current terms until either party terminates the contract, or until DFPS [TDPRS] notifies the provider of a change, at which point, the contract ends, and a new contract begins if the provider agrees to the new terms. This agreement will be expressed in writing.

(e) Upon DFPS's [TDPRS's] request, these families, facilities, group homes, and child-placing agencies must accept a DFPS [TDPRS] application form as complete and sufficient application for a child's placement. Facilities, group homes, and child-placing agencies that receive payment from DFPS [TDPRS] either directly or indirectly must

submit a completed cost report. These cost reports are used to set foster care rates for all service levels and emergency shelters. Reimbursement for a facility, group home, or child-placing agency serving all service levels is contingent on the completion and submittal of the cost report to DFPS [TDPRS]. Failure to complete and submit a cost report is grounds for placing a hold on payments to providers or for terminating the contract or agreement.

(f) DFPS [TDPRS] may exempt a family, facility, group home, or child-placing agency from the cost report requirement if extenuating circumstances make it impossible for the facility, group home, or child placing agency to comply. A letter stating the reason(s) for requesting an exemption from completing the cost report must be submitted in writing to DFPS [TDPRS]. DFPS [TDPRS] will, in its sole discretion, make a determination about whether to grant the exemption.

§700.329. Effective Dates of Foster Care Maintenance [Assistance] Payments.

(a) The effective date for beginning foster care maintenance payments is the date the child meets all eligibility requirements for foster care assistance.

(b) (No change.)

(c) The Texas Department of Family and Protective [and Regulatory] Services does not pay two different facilities for foster care assistance for the same child on the same date.

§700.330. Billing and Payment for Foster Care Assistance.

(a) (No change.)

(b) The Texas Department of Family and Protective [and Regulatory] Services (DFPS) [~~(TDPRS)~~] foster care billing staff use the IMPACT System to pay DFPS [TDPRS] foster homes and contracted facilities.

(c) If a county pays for foster care for the care of a child who is ineligible for state-provided foster care assistance or if a child's funds are used, the rate must be the same rate as DFPS [TDPRS] pays for the same service level.

§700.331. Effect of SSI Eligibility on State-Paid Foster Care.

(a) A child who receives SSI benefits is eligible for state-paid foster care assistance if the cost of foster care exceeds the SSI payment and the child meets the eligibility requirements for state-paid foster care.

(b) The Texas Department of Family and Protective [and Regulatory] Services deducts the SSI income from the monthly payment for state-paid foster care.

§700.332. Effect of SSI Eligibility on Title IV-E [AFDC] Foster Care.

A child is not entitled to receive both SSI benefits and Title IV-E [~~aid to families with dependent children~~] foster care assistance.

§700.333. Effect of SSI Eligibility on MAO [Foster Care].

A child is not entitled to receive both SSI benefits and MAO [~~medical assistance only~~ foster care assistance].

§700.345. Eligibility for Foster Care Recipients Placed Out of State or Placed in Texas from Other States.

(a) When a Title IV-E [~~an AFDC~~] foster care assistance recipient is placed out of state, the Texas Department of Family and Protective [~~and Regulatory~~] Services (DFPS) [~~(PRS)~~] continues to make [~~AFDC~~] foster care maintenance payments; but the receiving state becomes responsible for the Medicaid benefits. DFPS [PRS] furnishes

the receiving state with Title IV-E eligibility information for payment of Medicaid benefits.

(b) When a state-paid or medical-assistance-only foster care recipient is placed out of state, DFPS [PRS] continues to provide both Medicaid benefits and foster care maintenance payments, as applicable.

(c) When a Title IV-E [~~an AFDC~~] foster care assistance recipient is placed in Texas from another state, the sending state continues to make Title IV-E [~~AFDC~~] foster care maintenance payments, but DFPS [PRS] provides the Medicaid coverage. The sending state furnishes DFPS [PRS] with Title IV-E eligibility information for payment of Medicaid benefits.

§700.346. Return to Foster Care.

(a) Subject to the availability of an appropriate licensed placement, a former foster youth may return to foster care if the following eligibility criteria are met:

(1) The youth was in the managing conservatorship of the Department of Family and Protective Services (DFPS) when the youth:

(A) Turned 18 years old; or

(B) Ran away from foster care;

(2) The youth is between the ages of:

(A) 18 and 21 years old and is;

(i) Enrolled or to be enrolled within 30 days of placement in a technical or vocational program;

(ii) Enrolled or to be enrolled within 30 days of placement in high-school or in a course of instruction to prepare for the high school equivalency examination; or

(iii) Returning on a break from college or a technical or vocational program for at least one month but no more than four months; or

(B) 18 and 22 years old and enrolled in and attending full time a high school or a program leading toward a high school diploma;

(3) The youth does not have a:

(A) Felony conviction of an offense under Title 5, Title 6, Chapter 29 of Title 7, Chapter 43 or §42.072 of Title 9, §15.031 of Title 4, or §38.17 of Title 8 of the Texas Penal Code (TPC), or any like offense under the law of another state or federal law; or

(B) A finding of physical or sexual abuse of a child in this state or any other state; and

(4) The youth signs a voluntary agreement to return to care.

(b) At the sole discretion of DFPS, a youth may be precluded from returning to foster care if the youth has a:

(1) Misdemeanor or felony conviction under the TPC or the Texas Controlled Substances Act, or any like offense under the law of another state or federal law; or

(2) Finding of abuse or neglect of a child in this state or any other state.

(c) Continuing eligibility for any youth is contingent upon compliance with all requirements. No benefits are available past the month the youth turns 21 years old unless the requirements of subsection (a)(2)(B) of this section are met, but in no event may benefits be paid under this provision past the month in which a youth turns 22 years old.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 26, 2007.

TRD-200701586

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 10, 2007

For further information, please call: (512) 438-3437



40 TAC §700.322, §700.334

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements the Texas Family Code, §264.101 and §264.121.

§700.322. *Eligibility in Placements Provided by Relatives.*

§700.334. *Additional Eligibility Requirements for Medicaid Assistance Only (MAO) Foster Care.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. INTAKE, INVESTIGATION, AND ASSESSMENT

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §700.505, concerning priorities for investigation and assessment, and new §700.505, concerning priorities for reports of abuse and neglect, in its Child Protective Services chapter. The 79th Legislature, Regular Session, in Senate Bill 6, revised the Texas Family Code §261.301 and §261.3015. The revisions to §261.301 placed in statute the

priorities for investigations, which were previously in rule. It also reduced the response time for Priority II reports from 10 days to 72 hours. The revisions to §261.3015(a) and (a-1) clarified that DFPS should screen out less serious cases of abuse or neglect in an effort to focus staff efforts on the more serious cases that require a full investigation. New §700.505 is a rewrite of the previous rule regarding priority reports of abuse and neglect and response times. The primary change is reducing the response time for Priority II reports from 10 days to 72 hours. CPS is responding within the 72-hour time frame by either initiating an investigation or, pursuant to Texas Family Code §261.3015, by forwarding the report to specialized screening staff.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-years the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that DFPS response time for Priority II reports will be reduced from 10 days to 72 hours, which will increase child safety. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Gail Blackwell at (512) 438-3863 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-360, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed section does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

40 TAC §700.505

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Texas Family Code §261.301 and §261.3015, as amended by the 79th Legislature, Regular Session.

§700.505. Priorities for Investigation and Assessment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



40 TAC §700.505

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements Texas Family Code §261.301 and §261.3015, as amended by the 79th Legislature, Regular Session.

§700.505. Priorities for Reports of Abuse and Neglect.

(a) Child Protective Services (CPS) assigns priorities for reports of abuse and neglect based on the assessment of the immediacy of the risk and the severity of the possible harm to the child.

(1) Priority I reports concern children who appear to face an immediate risk of abuse or neglect that could result in death or serious harm.

(2) Priority II reports are all other reports of abuse or neglect that are not assigned a Priority I.

(b) Subject to the availability of funds, CPS must:

(1) Immediately respond to a report of abuse or neglect that is assigned a Priority I and involves circumstances in which the death of the child or substantial bodily harm to the child will imminently result unless the Department of Family and Protective Services (DFPS) immediately intervenes;

(2) Within 24 hours respond to a report of abuse or neglect that is assigned a Priority I, other than a report described in paragraph (1) of this subsection, by initiating an investigation; and

(3) Within 72 hours respond to a report of abuse or neglect that is assigned a Priority II by initiating an investigation or, pursuant to Texas Family Code §261.3015, by forwarding the report to specialized screening staff.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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SUBCHAPTER H. ADOPTION ASSISTANCE PROGRAM

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §700.801; new §700.801; and amendments to §§700.802 - 700.805, 700.820 - 700.823, 700.840, 700.841, 700.844 - 700.846, 700.850, 700.860, 700.880, and 700.881, concerning the adoption assistance program, in its Child Protective Services chapter. The original impetus for the changes is a provision in the Deficit Reduction Act (DRA) of 2005, P.L. 109-171, §7404. That provision alters the requirements governing eligibility determinations for adoption assistance benefits funded by Title IV-E of the Social Security Act. Specifically, the section provides that in cases in which IV-E eligibility is predicated upon eligibility for the Aid to Families with Dependent Children program (AFDC), the AFDC eligibility determination should no longer be made for both the month of removal and in the month the petition to adopt is filed. Rather, the AFDC eligibility determination should be made only for the month of removal. In addition to the changes necessitated by DRA, DFPS is making changes to Subchapter H, Adoption Assistance Program, so it is easier to understand and more consistent.

Section 700.801 is deleted and proposed as new. The definitions are alphabetized for easier access. With the exceptions noted below, the definitions are the same except for minor clarifications. The definition of "adoptive placement" is modified to better explain the time period and the requirements for an adoptive placement. The definition of "special needs child" and a cross reference to the relevant rule are added to eliminate confusion. The definition of "nonrecurring expenses" is added for clarification. The agency name and terminology are updated.

Section 700.802 is revised to eliminate superfluous language that is either contained in the rule or moved to another rule.

Section 700.803 clarifies the process used to determine Title IV-E and state-paid eligibility. The agency name and terminology are also updated.

Section 700.804 clarifies the meaning of the special needs definition for children who belong to certain racial and ethnic groups; describes acceptable types of proof of "reasonable efforts" to place a child without adoption assistance; and clarifies that in exceptional circumstances DFPS may deem an adoptive placement; however, the adoptive parents have the burden of proof. The agency name is also updated.

Section 700.805 clarifies the burden of proof for eligibility in cases involving children placed for adoption by a Licensed Child Placing Agency or other authorized entity.

Section 700.820 makes minor language revisions and adds reference to a rule for clarification purposes.

Section 700.821 clarifies that SSA determination must be prior to the finalization of the adoption. In order to comply with the Deficit Reduction Act of 2005, the rule specifies that the child's eligibility

for AFDC need only be determined in the month in which the court proceedings that resulted in the order removing the child began and not also in the month the petition to adopt is filed.

Section 700.822 is revised to comply with the Deficit Reduction Act of 2005. The rule specifies that the child's eligibility for AFDC need only be determined in the month in which the court proceedings that resulted in the order removing the child began and not also in the month the petition to adopt is filed. The subsections are renumbered in accordance with the deletion, and the question is made consistent with the answer.

Section 700.844 is revised to add the payment ceilings and delete the out-of-date process for establishing adoption assistance rates.

Section 700.845 makes minor stylistic revisions.

Section 700.846 adds an explanation of circumstances in which DFPS may grant retroactive benefits in an adoption assistance application. Authority for such a retroactive grant exists in current rule; however, the rule change will offer additional specifics regarding the possible grant of retroactive benefits. The rule also clarifies that adoption assistance benefits may begin prior to consummation of the adoption.

Section 700.881 makes minor stylistic revisions.

Sections 700.823, 700.840, 700.841, 700.850, 700.860, and 700.880 update the agency name and make minor revisions.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the rules governing eligibility for adoption assistance will be easier to understand and consistent with corresponding federal provisions. Eligibility for this program is of great importance to many families in Texas so it is important that the requirements are explained as clearly as possible, and that the burden of proof for establishing eligibility, particularly in the context of fair hearings, is fully described. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Susan Klickman at (512) 438-3302 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-361, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed amendments, repeal, and new section do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

DIVISION 1. PROGRAM DESCRIPTION AND DEFINITIONS

40 TAC §700.801

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements the Texas Family Code, §162.302 and §162.304.

§700.801. What do certain words and terms in this subchapter mean?

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



40 TAC §§700.801 - 700.805

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement the Texas Family Code, §162.302 and §162.304.

§700.801. What do certain pronouns, words, and terms in this subchapter mean?

(a) The pronouns used in this subchapter have the following meanings:

(1) The pronouns "I," "my," "you" and "your" refer to the adoptive parent(s).

(2) The pronouns "we," "us," "our" and "DFPS" refer to the Texas Department of Family and Protective Services (DFPS) or any of its divisions or employees, including Child Protective Services (CPS).

(b) The words and terms used in this subchapter have the following meanings, unless otherwise specified or the context clearly indicates otherwise:

(1) Adoptive parent(s)--The person(s) who commit(s) to adopting a child who is placed for the purpose of adoption by DFPS, an LCPA, or another authorized entity that has managing conservatorship of the child.

(2) Adoptive placement--The period of time beginning when DFPS, the LCPA, or another authorized entity places the child with adoptive parents and ending at consummation of the adoption. The child must not be placed for the purpose of adoption until the child is legally free for adoption following termination of parental rights or death of the child's parents. The child must be placed by DFPS, the LCPA, or another authorized entity that has the managing conservatorship of the child. The child must be placed for adoption in accordance with licensing minimum standards established in the state where the LCPA is licensed or certified, including requirements for an approved home study and Title IV-E requirements regarding criminal background checks.

(3) AFDC eligible--A child qualified for aid under the Texas State IV-A Plan (as in effect on July 16, 1996), with the exception that the child's family maximum resource limit is \$10,000. Requirements include that the child must live with a parent or specified relative and be deprived of parental support. Parental deprivation exists if one of the child's parents is dead, absent from the home, or has a mental or physical incapacity that prevents the parent from supporting or caring for the child, or principal wage earner parent is unemployed.

(4) Agreement or Adoption Assistance Agreement--The written contract for adoption assistance that is legally binding because both parties have signed it agreeing to all terms and conditions.

(5) Authorized entity--Any entity, such as another public agency or Tribe, with whom DFPS has a Title IV-E agreement, which permits the authorized entity to receive federal funding participation under Title IV-E of the federal Social Security Act.

(6) Complete application--All the forms and documents that must be filled out and received by DFPS to process a request for adoption assistance and to determine a child's eligibility.

(7) Deferred agreement--The legally binding, written contract to provide adoption assistance in the future if the need develops. A deferred agreement is used when the child is eligible for adoption assistance and you are able to meet the child's current needs, but you may be unable to meet the child's needs in the future if circumstances change.

(8) Licensed child-placing agency (LCPA)--An entity that is licensed or certified by the State of Texas or another state to place children for adoption.

(9) Nonrecurring expenses--A type of adoption assistance benefits that are one-time expenses directly related to the completion of the adoption process. Also see §700.850 of this title (relating to How do I get reimbursement of nonrecurring expenses?).

(10) Special needs child--A child who meets the definition described in §700.804 of this title (relating to Who is a special needs child?).

(11) State-paid adoption assistance--The state program for adoption assistance established under Texas Family Code, §162.302.

(12) Title IV-E--The federal program for adoption assistance established under Title IV-E of the Social Security Act, 42 U.S.C. §673.

§700.802. *What is adoption assistance?*

(a) Adoption assistance is a program designed to facilitate the adoption of children with special needs. [The program includes benefits to help meet the needs of your adopted child.]

(b) The benefits that may be provided under the program are:

(1) - (2) (No change.)

(3) reimbursement of [one-time expenses directly related to completing the adoption process (nonrecurring expenses)].

§700.803. *Do all children placed for adoption by DFPS [PRS] get adoption assistance?*

(a) No. Only a special needs child, in an approved adoptive placement, can qualify for adoption assistance. When we place a child for adoption, we first determine whether the child is eligible under Title IV-E. If the child is not eligible under Title IV-E but the child is a special needs child [income and resource limitations are met], then we will assess the child's eligibility [qualify the child] for the state-paid [state] adoption assistance program.

(b) (No change.)

§700.804. *Who is a special needs child?*

(a) The child must be less than 18 years old and meet one of the following criteria when the adoptive placement agreement is signed:

(1) (No change.)

(2) the child is at least two years old and a member of a racial or ethnic [minority] group that exits foster care at a slower pace than other racial or ethnic groups [traditionally creates a barrier to adoption];

(3) - (4) (No change.)

(b) (No change.)

(c) A reasonable effort must be made to find an adoptive placement without providing adoption assistance, unless doing so is against the child's best interests. Proof of such reasonable efforts may include:

(1) documentation that the child was registered on an adoption registry exchange for more than 60 days;

(2) documentation of any ongoing effort, whether through child welfare entities, government or private organizations, to locate an adoptive family; or

(3) one or more adoptive placements did not result in an adoption.

(d) For a child placed by DFPS where no adoptive placement agreement is signed, in exceptional circumstances, DFPS may deem that an adoptive placement was made, but it is your responsibility to provide sufficient documentary evidence of the beginning of the adoptive placement as defined in this subchapter.

§700.805. *Can a child who is placed by an LCPA or authorized entity get adoption assistance?*

(a) - (b) (No change.)

(c) A special needs child placed for adoption by an LCPA or authorized entity is not eligible for the state-paid [state] adoption assistance program.

(d) If a child who is placed by an LCPA or authorized entity applies for adoption assistance, it is the responsibility of the child's parents and the LCPA or authorized entity to provide the documentation necessary to make an eligibility determination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 26, 2007.

TRD-200701580

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 10, 2007

For further information, please call: (512) 438-3437



DIVISION 2. TITLE IV-E ELIGIBILITY REQUIREMENTS

40 TAC §§700.820 - 700.823

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement the Texas Family Code, §162.302 and §162.304.

§700.820. How do I get Title IV-E adoption assistance for my child?

(a) To be eligible for any adoption assistance benefits, your child must be a special needs child and you must sign an agreement with us before the child's adoption is finalized. In addition, benefits are only available to those who meet:

(1) the federal law requirements of U.S. citizenship or other ~~[special]~~ immigration status ~~[, as]~~ described in §700.824 of this title (relating to What if the child is not a U.S. citizen?); and

(2) (No change.)

(b) If [When] the additional Title IV-E eligibility requirements, as described in §700.821 of this title (relating to What are the additional Title IV-E eligibility requirements?) are met, ~~[as described in this division,]~~ you may be entitled to monthly payments, ~~[and]~~ Medicaid coverage for your child, and ~~[in addition to the reimbursement of]~~ nonrecurring expenses.

(c) If [When] the additional Title IV-E eligibility requirements are not met, the only benefit you can receive is reimbursement of non-recurring expenses, as described in §700.850 of this title (relating to How do I get reimbursement of nonrecurring expenses?).

(d) If an LCPA or authorized entity is managing conservator for the child you are adopting, you need to contact the child welfare agency in the state where you reside. We are only responsible for providing adoption assistance if:

(1) (No change.)

(2) you live in Texas and an LCPA or authorized entity is managing conservator for the child.

§700.821. What are the additional Title IV-E eligibility requirements?

A special needs child must be in an adoptive placement and meet one of the following conditions to be eligible for Medicaid and ~~[possible]~~ monthly payments under an agreement:

(1) The child is eligible for Supplemental Security Income (SSI) benefits, as determined by the Social Security Administration (SSA) prior to the finalization of the adoption ~~[during the adoptive placement];~~

(2) We have already determined that the child was eligible for Title IV-E foster care based on AFDC eligibility; ~~[We determine that the child is AFDC eligible both;]~~

~~[(A) in the month that court proceedings began which resulted in the order removing the child from the home; and]~~

~~[(B) in the month the adoption petition is filed;]~~

(3) We already determined that the child was eligible for Title IV-E adoption ~~[foster care]~~ assistance in a prior adoption ~~[at removal, and the child is also AFDC eligible in the month the adoption petition is filed];~~ or

(4) (No change.)

§700.822. How do we ~~[you]~~ determine whether the child was AFDC eligible?

~~[(a)]~~ To determine whether the child was AFDC eligible, we must consider the detailed circumstances of the home of the parent or relative from which the court ordered the child to be removed. If the child was no longer living in the home when the court ordered removal~~[-]~~

(1) the child must have been living there at some point during the six months before the court removal proceedings began; and

(2) we must determine that the child would have been eligible for AFDC assistance had the child still been living in that home during the month the court proceedings began.

~~[(b) We must also determine whether the child is still AFDC eligible at the time the adoption petition is filed.]~~

§700.823. What is necessary for a court order to be considered a removal?

(a) The ~~[very]~~ first order issued by the court in response to the petition to remove the child from the home must contain a judicial finding to the effect that it is contrary to the child's welfare, or not in the child's best interest, to remain in the home.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 10, 2007

For further information, please call: (512) 438-3437



DIVISION 3. APPLICATION PROCESS, AGREEMENTS, AND BENEFITS

40 TAC §§700.840, 700.841, 700.844 - 700.846, 700.850

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement the Texas Family Code, §162.302 and §162.304.

§700.840. What is the application process for adoption assistance?

(a) You must file a complete application with the adoption assistance staff in the DFPS [PRS] office in your area. Some of the information you are asked to provide is unrelated to determining your child's eligibility, but it may be used to discuss and negotiate the amount of monthly payments, as described in §700.844 of this title (relating to How are monthly payment amounts determined?).

(b) - (c) (No change.)

§700.841. When do I find out if my child is eligible?

We send you written notification of our decision within 30 days after we receive your complete application. If you do not receive the notification or you believe your application is not being processed promptly, you should contact the supervisor of the adoption assistance staff in the DFPS [PRS] office where you filed the application.

§700.844. How are monthly payment amounts determined?

(a) - (c) (No change.)

(d) The maximum monthly payment amount depends upon the child's authorized service level (or level of care) at the beginning of the adoptive placement. The payment ceiling for Basic care is \$400 per month; the payment ceiling for Moderate, Specialized, and Intense care is \$545 per month. [is reviewed and established by the Board of Protective and Regulatory Services ("the Board") on or before the beginning of each budgetary biennium. The Board may also review and adjust the maximum payment amount during the budgetary biennium; if necessary. Whenever the Board adopts a new maximum payment amount, the Board must specify the effective date for the new payment ceiling and whether it applies to all agreements or only to new ones. The Board's determination of the maximum payment amount is based upon at least the following considerations:]

[(1) the recommendation of PRS;]

[(2) the requirements of state and federal law;]

[(3) budgetary resources;]

[(4) projections of the number of children in foster care that may need assistance to facilitate their adoption; and]

[(5) whether a new payment amount will apply to all agreements or only to new ones.]

§700.845. Can my child get adoption assistance monthly payments in addition to Supplemental Security Income (SSI) benefits?

Only the Social Security Administration (SSA) can determine whether your child is eligible for SSI benefits. The SSA considers your family's financial resources in determining whether your child remains eligible for SSI benefits after adoption. If your child does remain eligible, the SSI benefits would be reduced by any amount you receive in adoption assistance monthly payments. If you choose to receive SSI benefits and do not sign an agreement with us before the adoption is final, you will

not be eligible ~~[cannot return later and ask]~~ for adoption assistance if the SSI benefits stop ~~after the adoption is final~~.

§700.846. How is the effective date of the agreement determined?

(a) Benefits are not available for any period of time before the effective date of the agreement. The effective date of the agreement cannot be before the month in which we receive your completed application. DFPS may, for good cause, grant retroactive benefits for a period not to exceed 12 months prior to receipt of the completed application if you can demonstrate that: ~~[the child meets all eligibility requirements. If the child already meets all eligibility requirements when you apply, the effective date of the agreement cannot be more than 12 months before we receive your complete application. Benefits are not available for any period of time before the effective date of the agreement.]~~

(1) your child was eligible for adoption assistance prior to receipt of the completed application;

(2) DFPS made an error in determining that the child was not eligible for benefits; or

(3) DFPS caused a delay in the activation of benefits.

(b) (No change.)

(c) Medicaid and monthly benefits may begin prior to the consummation of the adoption.

§700.850. How do I get reimbursement of nonrecurring expenses?

(a) - (b) (No change.)

(c) We must receive your claim for reimbursement no later than 18 months after the adoption is finalized. If your right to reimbursement is authorized by a DFPS [PRS] hearing order after the adoption is final, we must receive your claim as soon as possible.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200701582

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 10, 2007

For further information, please call: (512) 438-3437



DIVISION 4. CHANGES IN CIRCUMSTANCES

40 TAC §700.860

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the Texas Family Code, §162.302 and §162.304.

§700.860. *What if my child's or family's circumstances change?*

(a) (No change.)

(b) If you are not already receiving the maximum monthly payment, you may request an increase when there is a change of circumstances affecting your adopted child's current needs or your family's ability to meet those needs. You must submit a written request for an increase to the local DFPS [PRs] office that processed your application and specify the change(s) in your child's or family's circumstances. Any request for an increase in monthly payment amount is subject to the requirements and limitations described in §700.844 of this title (relating to How are monthly payment amounts determined?).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200701583

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 10, 2007

For further information, please call: (512) 438-3437



DIVISION 5. APPEALS AND HEARINGS

40 TAC §700.880, §700.881

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement the Texas Family Code, §162.302 and §162.304.

§700.880. *What are my rights to appeal a DFPS [PRs] decision regarding adoption assistance benefits?*

(a) You have the right to request a hearing whenever adoption assistance benefits are denied, delayed, suspended, reduced, or terminated. A hearing is also available when the processing of your application is unreasonably delayed. The hearing, as described in §730.1102 of this title (relating to Definitions), provides you the opportunity to appeal a decision made in a local DFPS [PRs] office to a higher authority within DFPS [PRs].

(b) - (c) (No change.)

§700.881. *Can my child still get benefits if I did not sign an agreement before the adoption?*

(a) (No change.)

(b) In the hearing, you have the burden to prove both:

(1) (No change.)

(2) that your child meets [~~met~~] all eligibility requirements [before the adoption].

(c) If we agree that your child is [~~was~~] eligible [before the adoption] and your failure to have a signed agreement should be excused, we can sign an agreed order with you and avoid having a hearing. The hearing officer must approve the agreed order, and you must sign an agreement consistent with its provisions, before you can receive benefits.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 26, 2007.

TRD-200701584

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 10, 2007

For further information, please call: (512) 438-3437



SUBCHAPTER P. PREPARATION FOR ADULT LIVING

DIVISION 2. EDUCATION AND TRAINING VOUCHER PROGRAM

40 TAC §700.1615

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.1615, concerning what must an eligible youth do to qualify for participation in the ETV Program, in its Child Protective Services chapter. The purpose of the amendment is to allow youths who are age 16 and up and are exempt from compulsory high-school attendance to receive financial assistance to pay the costs of attendance for a technical or vocational program.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Brown also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be that youth reaching adult age and transitioning from the foster care system will be better prepared with adequate job skills resulting in a smoother transition into adulthood and independent living. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of the proposal may be directed to Candice Holmes at (512) 438-2350 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-362, Department of Family and Protective Services E-611,

P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements 42 U.S.C. §677(a)(6)(i).

§700.1615. What must an eligible youth do to qualify for participation in the ETV Program?

(a) To qualify for financial assistance under the ETV Program, an eligible youth must:

(1) meet one of the requirements in §700.1613(a) of this title (relating to Who can be eligible for the ETV Program?) [have a high school diploma or equivalent; or at least be beyond the age of compulsory school attendance (age 18)];

(2) have a high school diploma or equivalent, or be exempt from compulsory school attendance pursuant to Texas Education Code, §25.086(a)(6)(A);

(3) ~~[(2)]~~ be enrolled in an institution of higher education that falls within one of the following categories:

(A) an accredited or pre-accredited, public or nonprofit institution that provides a bachelor's degree or not less than a two-year program that provides credit towards a degree or certification;

(B) an accredited or pre-accredited, public or nonprofit institution that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation; or

(C) an accredited or pre-accredited, public or nonprofit institution, or a private institution, that has been in existence for at least two years and that provides a program of training to prepare students for gainful employment in a recognized occupation; and

(4) ~~[(3)]~~ complete and file an application and required documentation with the ETV coordinator.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 26, 2007.

TRD-200701585

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 10, 2007

For further information, please call: (512) 438-3437

TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT MANAGEMENT

The Texas Department of Transportation (department) proposes amendments to §9.2, concerning contract claim procedure and §9.38, concerning contract management.

EXPLANATION OF PROPOSED AMENDMENTS

Contract claims for certain department contracts, including construction, maintenance, and professional service contracts, are governed by §9.2, Contract Claim Procedure.

Proposed amendments to §9.2 distinguish the procedures for a contractor making a claim against the department, versus the department making a claim against the contractor. The department's authority to issue rules on the matter is Transportation Code, §201.112, which specifies that a "person with a claim" may make a contract claim using the procedures adopted by the department. These amendments are necessary to resolve confusion about where and when the department itself may file a claim.

Transportation Code, §201.112 does not explicitly limit to contractors the authority to file a claim. However, when the department has a claim against a contractor, the department may file suit in court. The amendments clarify that the department may, but is not required to, use the administrative proceeding to file a counter claim.

Subsections 9.2(a)(3) and (b) are amended to show that only a prime contractor may submit a claim to begin a claim proceeding under the section. The amendments also add that after a claim proceeding has begun the department may make a counter claim.

Paragraph 9.2(b)(3) is added concerning the department's authority to file a claim in a court of competent jurisdiction. The department's ability to file suit in court is established by other law, and the section is not intended to affect such law.

Subsection 9.2(d) concerns definitions. Paragraph 9.2(d)(1) is amended to clarify an ambiguity in the existing language and to make the definition of "claim" consistent with the standard for filing a claim in §9.2(a)(2). The new language makes clear that a claim must relate to an actual request for relief. The definition of "claimant" is deleted because the term is no longer used in the section. The subsequent provisions are renumbered.

Subsection 9.2(g)(1) and (2) concerns the procedure for filing a claim. The amendments substitute "prime contractor" for "claimant" to clarify that only a prime contractor may file an original claim. A provision is added setting a deadline of 45 days for the department to file a counterclaim before the contract claim committee holds the informal meeting with the contractor.

Subsection 9.2(g)(3) and (5) adds that the prime contractor shall be given an opportunity to submit a responsive report and recommendation concerning the counterclaim. The provisions concerning the response to the recommendation by the contract claim committee substitute "prime contractor" for "claimant." The prime contractor files the original claim, and so the prime contractor is the proper entity that is responsible for responding to

the committee's recommendation. The department may enforce in a court of competent jurisdiction a final department order issued under the section.

Subsection 9.38(f), Errors and omissions, is amended to show that the department will first give notice to a provider of errors and omissions, and will attempt to resolve a claim through informal resolution. The amendments also clarify that the department's authority to file suit in court is established by other law, and the section is not intended to affect such law. The amendment also clarifies that a contract claim under §9.2 must be initiated by a contractor.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. The amendments in essence state that the department cannot file a claim initiating a proceeding under §9.2. The department believes this reflects the limits of the department's authority, whether or not it is reflected in the department's rules. The amendments would have no effect on local government. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Mark Marek, Director, Design Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Marek has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to clarify the handling of contract claims. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §9.2 and §9.38 may be submitted to Mark Marek, Director, Design Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on June 11, 2007.

SUBCHAPTER A. GENERAL

43 TAC §9.2

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.112, which provides the department with the authority to create a contract claims procedure for certain contracts.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.112.

§9.2. *Contract Claim Procedure.*

(a) Applicability. A claim shall satisfy the requirements in paragraphs (1) - (3) of this subsection.

(1) - (2) (No change.)

(3) The claim is brought by a prime contractor ~~[or by the department]~~.

(b) Pass-through claim; claim and counter claim.

(1) A prime contractor may make a claim on behalf of a subcontractor only if the prime contractor is liable to the subcontractor on the claim.

(2) Only a prime contractor may submit a claim to begin a claim proceeding under this section. After a claim proceeding has begun the department may make a counter claim.

(3) This section does not abrogate the department's authority to file a claim in a court of competent jurisdiction. The procedure for the department to file a claim in a court of competent jurisdiction, including the deadline to file a claim, is set by other law.

(c) (No change.)

(d) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise, except that when used in subsection (c) of this section, the terms claim, comprehensive development agreement and CDA shall have the meanings given such terms stated in §9.6 of this chapter.

(1) Claim--A claim for compensation, for a time extension, or for any other remedy arising from a [or other] dispute, disagreement, or controversy concerning respective rights and obligations under the contract [including any alleged breach or failure to perform and for remedies].

~~[(2) Claimant--The department or prime contractor who submits a contract claim under this section.]~~

(2) ~~[(3)]~~ Commission--The Texas Transportation Commission.

(3) ~~[(4)]~~ Committee--The Contract Claim Committee.

(4) ~~[(5)]~~ Department--The Texas Department of Transportation.

(5) ~~[(6)]~~ Department office--The department district, division, or office responsible for the administration of the contract.

(6) ~~[(7)]~~ Department office director--The chief administrative officer of the responsible department office; the officer shall be a district engineer, division director, or office director.

(7) ~~[(8)]~~ District--One of the 25 districts of the department.

(8) ~~[(9)]~~ Executive director--The executive director of the Texas Department of Transportation.

(9) ~~[(10)]~~ Prime contractor--An individual, partnership, corporation, or other business entity that is a party to a written contract with the state of Texas which is entered into and administered by the department under Transportation Code, §22.018, §391.091, Chapter 223, or Government Code, Chapter 2254, Subchapters A and B.

(10) ~~[(11)]~~ Project--The portion of a contract that can be separated into a distinct facility or work unit from the other work in the contract.

(e) - (f) (No change.)

(g) Procedure.

(1) Exclusive procedure. Except as provided in subsection (c) of this section, a prime contractor shall file a claim [contract claim shall be filed] under the procedure in this subsection. A claim filed by the prime contractor must be considered first by the committee before the claim is considered in a contested case hearing.

(2) Filing claim.

(A) The prime contractor [claimant] shall file a [contract] claim after completion of the contract or when required for orderly performance of the contract. A prime contractor shall file a claim [shall be filed] no later than one year after the earlier of the following:

(i) the department issues notice to the contractor that it is in default, or the department terminates the contract; or

(ii) the department issues final acceptance of the project that is the subject of the contract.

(B) The prime contractor [claimant] shall file a contract claim request and a detailed report with the department's construction division, the department engineer under whose administration the contract was or is being performed, or the committee.

(C) A claim [If] filed by a prime contractor[, the claim] shall include a certification as follows: I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the department is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

(D) - (E) (No change.)

(F) The deadline for the department to file a counter claim is 45 days before the committee holds an informal meeting under paragraph (3) of this subsection.

(3) Evaluation of claim by the committee.

(A) The committee's responsibility is to gather information, study the relevant issues, and meet informally with the prime contractor if requested. The committee shall attempt to resolve the claim.

(B) The committee shall secure detailed reports and recommendations from the responsible department office, and may confer with any other department office deemed appropriate by the committee. The [If the department is the claimant, the] committee shall give the prime contractor the opportunity to submit a responsive report and recommendation concerning a counter claim filed by the department.

(C) The committee shall afford the prime contractor an opportunity for a meeting to informally discuss the disputed matters and to provide the prime contractor an opportunity to present relevant information and respond to information the committee has received from the department office. Proceedings before the committee are an attempt to mutually resolve a [contract] claim without litigation and are not admissible for any purpose in a formal administrative hearing provided in subparagraph (D)(ii) of this paragraph. All oral communications, reports, or other written documentation prepared by department staff in connection with the analysis of a [contract] claim are part of the attempt to mutually resolve a [contract] claim without litigation, and are also not admissible for any purpose in a formal administrative hearing provided in subparagraph (D)(ii) of this paragraph.

(D) The committee chairman shall give written notice of the committee's decision on the claim to the department and prime contractor. The department and prime contractor are presumed to receive the decision three days after it is sent by United States mail.

(i) If the prime contractor [claimant] does not object to the committee's decision, the prime contractor [claimant] shall file a written statement with the committee's chairman stating that the prime contractor [claimant] does not object. The prime contractor [claimant] shall file the statement no later than 20 days after receipt of the committee's decision. The chairman shall then prepare a document showing the settlement of the claim including, when required, payment [either to

the department or] to the prime contractor, and the prime contractor's [claimant's] release of all claims under the contract. The prime contractor [claimant] shall sign it. The executive director may approve the settlement, or may request the commission to approve the settlement by issuance of an order. The executive director shall then implement the resolution of the claim. If [, and if] contemplated in the committee's decision, the executive director shall expend funds as specified in the decision. If contemplated in the committee's decision, the executive director shall order the prime contractor to make payment to the department.

(ii) If the prime contractor [claimant] objects to the committee's decision the prime contractor [claimant] shall file a petition with the executive director no later than 20 days after receipt of the committee's decision requesting an administrative hearing to litigate the claim under the provisions of §§1.21 et seq. of this title (relating to Procedures in Contested Cases).

(iii) If the prime contractor [claimant] fails to file a written petition under clause (ii) of this subparagraph within 20 days of receipt of the committee's decision, the prime contractor [claimant] waives his right to a contested case hearing. All further litigation of claims on the project or contract by the prime contractor [claimant] shall be barred by the doctrines of issue and claim preclusion. The chairman shall then prepare an order implementing the resolution of the claim under the committee's decision, and stating that further litigation on the claim is prohibited. The executive director shall then issue the order and implement the resolution of the claim. If [, and if] contemplated in the committee's decision, the executive director shall expend funds as specified in the decision. If contemplated in the committee's decision, the executive director shall order the prime contractor to make payment to the department.

(4) (No change.)

(5) This section does not abrogate the department's authority to enforce in a court of competent jurisdiction a final department order issued under the section.

(h) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 27, 2007.

TRD-200701591

Bob Jackson

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: June 10, 2007

For further information, please call: (512) 463-8683



SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

43 TAC §9.38

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.112, which

provides the department with the authority to create a contract claims procedure for certain contracts.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.112.

§9.38. *Contract Management.*

(a) - (e) (No change.)

(f) Errors and omissions, claims.

(1) Policy. It is the department's policy to require providers to correct errors or omissions in the providers' services which are required under the contract without undue delay and without additional cost to the department.

(2) Procedure.

(A) Claim by department [~~Notification~~].

(i) The department will notify the provider of [the] errors and omissions.

(ii) The department will offer the provider an opportunity for informal resolution, and will attempt to resolve a claim informally.

(iii) If informal resolution fails, the department may file a claim against a provider in a court of competent jurisdiction. The

procedure for the department to file a claim in a court of competent jurisdiction, including the deadline to file a claim, is set by other law.

(B) Claim by prime provider [~~Resolution~~]. The procedure concerning a claim by a prime provider and counter claim by the department is set out in [A dispute involving errors and omissions shall be resolved in accordance with] §9.2 of this title (relating to Contract Claim Procedure).

(g) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 27, 2007.

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Bob Jackson

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: June 10, 2007

For further information, please call: (512) 463-8683

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 17. CAMPUS PLANNING

SUBCHAPTER K. REPORTS

19 TAC §17.101

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §17.101 which appeared in the February 23, 2007, issue of the *Texas Register* (32 TexReg 703).

Filed with the Office of the Secretary of State on April 24, 2007.

TRD-200701548

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: April 24, 2007

For further information, please call: (512) 427-6114

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

19 TAC §4.85

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §4.85, concerning Dual Credit Requirements, with one technical, non-substantive, grammatical modification made; the word "and" was changed to the word "or" in §4.85(b)(2)(A), to the proposed text as published in the February 23, 2007, issue of the *Texas Register* (32 TexReg 701). Specifically, this adopted amendment will provide more high school students with access to college-level courses.

The following comments were received regarding the amendments.

Comment: A comment was received from the American College Testing Program (ACT). ACT requests that the PLAN assessment be included as an option for students.

Response: Staff responded that, upon receipt of valid score information, a rule change to include PLAN would be presented to the Board in July 2007.

The amendments are adopted under the Texas Education Code, §§29.182, 29.184, 61.027, 61.076(J), 130.001(b)(3) - (4), 130.008, 130.090, and 135.06(d), which provides the Coordinating Board with the authority to regulate dual credit partnerships between public two-year associate degree-granting institution and public universities with secondary schools.

§4.85. Dual Credit Requirements.

(a) Eligible Courses.

(1) Courses offered for dual credit by public two-year associate degree granting institutions must be identified as college-level academic courses in the current edition of the Lower Division Academic Course Guide Manual adopted by the Board or as college-level workforce education courses in the current edition of the Workforce Education Course Manual adopted by the Board.

(2) Courses offered for dual credit by public universities must be in the approved undergraduate course inventory of the university.

(3) Public colleges may not offer remedial and developmental courses for dual credit.

(b) Student Eligibility.

(1) A high school student is eligible to enroll in dual credit courses in the eleventh and/or twelfth grade if the student:

(A) demonstrates college readiness by achieving the minimum passing standards under the provisions of the Texas Success Initiative as set forth in §4.57 of this title (relating to Minimum Passing Standards) on relevant section(s) of an assessment instrument approved by the Board as set forth in §4.56 of this title (relating to Assessment Instruments); or

(B) demonstrates that he or she is exempt under the provisions of the Texas Success Initiative as set forth §4.54 of this title (relating to Exemptions/Exceptions).

(2) An eleventh grade high school student is also eligible to enroll in dual credit courses under either of the following conditions;

(A) a student achieves a score of 2200 on Mathematics and/or a score of 2200 on English Language Arts with a writing subsection score of at least 3 on the tenth grade TAKS relevant to the courses to be attempted. An eligible high school student who has enrolled in dual credit courses in the eleventh grade under this provision shall not be required to demonstrate further evidence of eligibility to enroll in dual credit courses in the twelfth grade; or

(B) the student achieves a combined score of 107 on the PSAT/NMSQT with a minimum of 50 on the critical reading and/or mathematics test relevant to the courses to be attempted. An eligible high school student who has enrolled in dual credit under this provision must demonstrate eligibility to enroll in dual credit courses in twelfth grade.

(3) A high school student is eligible to enroll in workforce education dual credit courses in the eleventh and/or twelfth grade if the student demonstrates that he or she has achieved the minimum high school passing standard on the Mathematics section and/or the English/Language Arts section on the tenth or eleventh grade TAKS.

(A) A student may enroll only in those workforce education dual credit courses for which the student has demonstrated eligibility.

(B) A student who is exempt from taking TAKS may be otherwise evaluated by an institution to determine eligibility for enrolling in workforce education dual credit courses.

(4) Students who are enrolled in private or non-accredited secondary schools or who are home-schooled must satisfy paragraphs (1) - (3) of this subsection.

(5) To be eligible for enrollment in a dual credit course offered by a public college, students must meet all the college's regular prerequisite requirements designated for that course (e.g., minimum

score on a specified placement test, minimum grade in a specified previous course, etc.).

(6) To be eligible for enrollment in a dual credit course offered by a public college, students must have at least junior year high school standing. Exceptions to this requirement for students with demonstrated outstanding academic performance and capability (as evidenced by grade-point average, PSAT/NMSQT scores, or other assessment indicators) may be approved by the principal of the high school and the chief academic officer of the college. Students with less than junior year high school standing must demonstrate eligibility as outlined under subsection (b)(1) of this section.

(7) High school students shall not be enrolled in more than two dual credit courses per semester. Exceptions to this requirement for students with demonstrated outstanding academic performance and capability (as evidenced by grade-point average, ACT or SAT scores, or other assessment indicators) may be approved by the principal of the high school and the chief academic officer of the college.

(8) An institution may impose additional requirements for enrollment in courses for dual credit that do not conflict with this section.

(9) An institution is not required, under the provisions of this section, to offer dual credit courses for high school students.

(c) Location of Class. Dual credit courses may be taught on the college campus or on the high school campus. For dual credit courses taught exclusively to high school students on the high school campus and for dual credit courses taught electronically, public colleges shall comply with applicable rules and procedures for offering courses at a distance in §§4.101 - 4.108 of this title (relating to Distance Education and Off-Campus Instruction). In addition, dual credit courses taught electronically shall comply with the Board's adopted Principles of Good Practice for Courses Offered Electronically.

(d) Composition of Class. Dual credit courses may be composed of dual credit students only or of dual and college credit students. Exceptions for a mixed class, which would also include high school credit-only students, may be allowed only under one of the following conditions:

(1) If the course involved is required for completion under the State Board of Education Recommended or Distinguished Achievement High School Program graduation requirements, and the high school involved is otherwise unable to offer such a course.

(2) If the high school credit-only students are College Board Advanced Placement students.

(3) If the course is a career and technology/college workforce education course and the high school credit-only students are earning articulated college credit.

(e) Faculty Selection, Supervision, and Evaluation.

(1) The college shall select instructors of dual credit courses. These instructors must be regularly employed faculty members of the college or must meet the same standards (including minimal requirements of the Southern Association of Colleges and Schools) and approval procedures used by the college to select faculty responsible for teaching the same courses at the main campus of the college.

(2) The college shall supervise and evaluate instructors of dual credit courses using the same or comparable procedures used for faculty at the main campus of the college.

(f) Course Curriculum, Instruction, and Grading. The college shall ensure that a dual credit course and the corresponding course of-

fered at the main campus of the college are equivalent with respect to the curriculum, materials, instruction, and method/rigor of student evaluation. These standards must be upheld regardless of the student composition of the class.

(g) Academic Policies and Student Support Services.

(1) Regular academic policies applicable to courses taught at the college's main campus must also apply to dual credit courses. These policies could include the appeal process for disputed grades, drop policy, the communication of grading policy to students, when the syllabus must be distributed, etc.

(2) Students in dual credit courses must be eligible to utilize the same or comparable support services that are afforded college students on the main campus. The college is responsible for ensuring timely and efficient access to such services (e.g., academic advising and counseling), to learning materials (e.g., library resources), and to other benefits for which the student may be eligible.

(h) Transcribing of Credit. For dual credit courses, high school as well as college credit should be transcribed immediately upon a student's completion of the performance required in the course.

(i) Funding.

(1) The state funding for dual credit courses will be available to both public school districts and colleges based on the current funding rules of the State Board of Education and the Board.

(2) The college may claim funding for all students getting college credit in dual credit courses.

(3) All public colleges, universities, and health-related institutions may waive all or part of tuition and fees for a Texas high school student enrolled in a course for which the student may receive dual course credit.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 24, 2007.

TRD-200701540

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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Proposal publication date: February 23, 2007

For further information, please call: (512) 427-6114



SUBCHAPTER H. P-16 COLLEGE READINESS AND SUCCESS

19 TAC §4.175

The Texas Higher Education Coordinating Board adopts amendments to §4.175, concerning Composition and Duties of Statewide Discipline-Based College Readiness Vertical Teams, without changes to the proposed text as published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1183). Specifically, this adopted amendment removes language related to an appointment of an advisory committee that is no longer needed, since there will be an appointment of a special commission of stakeholders that will serve the same purpose of ensuring college readiness standards are adequate to address

workplace competencies. Therefore, this subsection of the rules is unnecessary.

There were no comments received regarding the amendments.

The amendments are adopted under the Texas Education Code, §28.008, which provides the commissioner with the authority to determine, in cooperation with the commissioner of education, the composition of statewide discipline-based college-readiness vertical teams.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND/OR HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER B. ROLE AND MISSION, TABLES OF PROGRAMS, COURSE INVENTORIES

19 TAC §5.24

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §5.24 concerning preliminary authority for doctoral programs without changes to the proposed text as published in the February 23, 2007, issue of the *Texas Register* (32 TexReg 703). Specifically, these adopted amendments are: To replace the word "mission" in criterion (b)(3) with the word "discipline." To add another criterion as (b)(9). This new criterion would require institutions to provide a plan for external program accreditation, licensing, or other professional recognition, if applicable to the profession.

One comment was received regarding this amendment.

Comment: The University of Texas at Dallas commented that they were in support of the rule changes.

Response: Staff received comment and no further changes were made.

The amendment is adopted under the Texas Education Code, §61.051(e), which provides the Coordinating Board with the authority to review and approve institutions' table of programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



CHAPTER 21. STUDENT SERVICES SUBCHAPTER J. THE PHYSICIAN EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §21.255

The Texas Higher Education Coordinating Board adopts an amendment to §21.255 concerning the Physician Education Loan Repayment Program, without changes to the proposed text as published in the February 23, 2007, issue of the *Texas Register* (32 TexReg 704). Specifically, the proposed amendment would add to the list of specified state agencies the Texas Department of Aging and Disability Services (DADS), which was inadvertently omitted from this rule when the names of two former state agencies were updated in program rules in July 2006. The acronym for the Texas Department of State Health Services - DSHS - would also be added. The section referring to the eligibility of physicians serving in specified state agencies was updated to reflect agency name changes resulting from the reorganization of the former Texas Department of Health and Texas Department of Mental Health and Mental Retardation. The functions of these two agencies were assigned to the new Texas Department of State Health Services and the Texas Department of Aging and Disability Services (DADS). However, when the update was made, the Texas Department of Aging and Disability Services was inadvertently excluded from the section of the rule that limits the participation of state agency physicians. The proposed amendment would correct this omission.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §§61.531 - 61.540, which provides the Coordinating Board with the authority to establish procedures to administer this program and Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules to effectuate the provisions of Texas Education Code, Chapter 61.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



SUBCHAPTER K. THE GOOD NEIGHBOR SCHOLARSHIP PROGRAM

19 TAC §21.285

The Texas Higher Education Coordinating Board adopts an amendment to §21.285 concerning The Good Neighbor Scholarship Program, without changes to the proposed text as published in the February 23, 2007, issue of the *Texas Register* (32 TexReg 705). Specifically, the amendment to §21.285 would clarify that in the process of selecting scholarship recipients no special consideration will be given to applicants who are relatives of Board employees. There has been no evidence of this happening in the past, but a recent audit suggested such safeguards should be added to program rules.

No comments were received regarding the amendment.

The amendment is adopted under the Texas Education Code, §54.207, which provides the Coordinating Board with the authority to adopt rules necessary to implement The Good Neighbor Scholarship Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.33

The Texas Higher Education Coordinating Board adopts new §22.33, concerning the Tuition Equalization Grant Program, without changes to the proposed text as published in the February 23, 2007, issue of the *Texas Register* (32 TexReg 705).

Specifically, the new section indicates that the Board will include in its annual financial aid report to the Legislature a report on the Tuition Equalization Grant Program (TEG) that gives a breakdown of TEG recipients by ethnicity, indicating the percentage of each ethnic group that received TEG funds for the academic year at each institution. This reporting requirement is included in §61.230 of the Texas Education Code and has been met in the past through the statistical supplement to the Board's annual report. The financial aid report is a more appropriate place in which to house this information for sharing with the Legislature.

No comments were received regarding the new section.

The new section is adopted under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules necessary to implement the Tuition Equalization Grant Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §22.234

The Texas Higher Education Coordinating Board adopts an amendment to §22.234, concerning the Towards EXcellence, Access, and Success (TEXAS) Grant Program, without changes to the proposed text as published in the February 23, 2007, issue of the *Texas Register* (32 TexReg 706).

Specifically, the amendment clarifies how institutions are to determine award amounts when students enrolled for fewer than nine hours are awarded TEXAS grants. In particular, they are to take the maximum award for the relevant term, divide it by 12 to derive a per-hour award amount, and multiply the results by the number of hours for which the student is actually enrolled. The inclusion of this formula in rule will help ensure that institutions handle in a consistent manner awards for students in this situation.

No comments were received regarding the amendment.

The amendment is adopted under the Texas Education Code, §56.303, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§56.301 - 56.311.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 24, 2007.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.21 - 537.23, 537.35, 537.39 - 537.41, 537.48

The Texas Real Estate Commission (TREC) adopts amendments to §§537.21 - 537.23, 537.35, 537.39 - 537.41, and 537.48, concerning Professional Agreements and Standard Contract Forms without changes to the proposed text as published in the March 16, 2007, issue of the *Texas Register* (32 TexReg 1456) and will not be republished. The amendments adopt by reference eight revised contract forms for use by Texas real estate licensees. The forms are adopted without changes as submitted to the Texas Register.

The revised forms may be used on a voluntary basis upon adoption; licensees will be required to use the forms on a mandatory basis as of July 1, 2007. Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

Generally speaking most of the revisions to the forms are non-substantive in nature and update and conform the text and format for consistency with current contract forms.

The amendment to §537.21 adopts by reference Standard Contract Form TREC No. 10-5, Addendum for Sale of Property by Buyer. The revisions to Paragraphs A & B of the form remove references to a specific time of day in the definition of Contingency and in the deadline date to waive the Contingency. Paragraph D is rewritten for clarity and deletes extraneous language regarding Buyer's failure to obtain loan or assumption approval.

The amendment to §537.22 adopts by reference Standard Contract Form TREC No. 11-6, Addendum for "Back-Up" Contract. The blank line for the Buyer's name is removed from Paragraph A. Paragraphs B & C are rewritten and combined for clarity. In Paragraph B, the reference to a specific time of day is deleted consistent with the revisions to TREC No. 10-5; the reference to a Contingency Date is deleted in the last sentence of Paragraph B, which defines the Amended Effective Date for purposes of performance of the Back-Up Contract. Therefore, the Amended Effective Date hinges solely on the date the Buyer receives notice of termination of the First Contract.

The amendment to §537.23 adopts by reference Standard Contract Form TREC No. 12-2, Addendum for Release of Liability on Assumed Loan and/or Restoration of Seller's VA Entitlement. The amendments to the form change the title to more accurately reflect the purpose and use of the addendum. Redundant phrases in Paragraphs A.2, B.2, and the Notice are removed. The paragraph that addresses payment of costs for obtaining the release and restoration, which includes a sentence regarding negotiation of payment of such costs that exceed a specified amount, is amended to delete the sentence so that seller pays all such costs under the addendum.

The amendment to §537.35 adopts by reference Standard Contract Form TREC No. 28-1, Environmental Assessment, Threatened or Endangered Species, and Wetlands Addendum. The amendments to the form remove redundant text and make non-substantive conforming changes consistent with current forms.

The amendment to §537.39 adopts by reference Standard Contract Form TREC No. 32-1, Condominium Resale Certificate. The amendments to the form add two additional paragraphs: Paragraph O regarding disclosure of association fees resulting from the transfer, and Paragraph N regarding disclosure of contributions, if any, to the capital reserves account.

The amendment to §537.40 adopts by reference Standard Contract Form TREC No. 33-1, Addendum for Coastal Area Property. The amendments to the form make non-substantive conforming changes consistent with current forms.

The amendment to §537.41 adopts by reference Standard Contract Form TREC No. 34-2, Addendum for Property Located Seaward of the Gulf Intracoastal Waterway. The amendments to the form make non-substantive conforming changes consistent with current forms.

The amendment to §537.48 adopts by reference Standard Contract Form TREC No. 41-1, Loan Assumption Addendum. The amendments to the form make non-substantive conforming changes consistent with current forms.

The commission received 3 comments during the notice and comment period, including one comment from the Houston Association of Realtors. One commenter suggested that TREC No. 32-1, Condominium Resale Certificate, should include a more detailed definition of "budget" in paragraph G. The commission respectfully disagrees with the commenter and believes that the term "budget" is sufficiently described in the form and that no additional clarification is necessary. One commenter asked a question regarding how a person would terminate a contract subject to the terms of TREC No. 28-1, Environmental Assessment, Threatened or Endangered Species, and Wetlands Addendum. One commenter asked a general question about the assumption of hazard insurance under TREC No. 41-1, Loan Assumption Addendum.

The reasoned justification for the revisions to the rules and forms adopted by reference is to clarify existing rules, remove redundant provisions, and to make the forms more consistent with other promulgated forms.

The amendments and forms are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 24, 2007.

TRD-200701558

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Effective date: July 1, 2007

Proposal publication date: March 16, 2007

For further information, please call: (512) 465-3900

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 295. OCCUPATIONAL HEALTH SUBCHAPTER J. TEXAS MOLD ASSESSMENT AND REMEDIATION RULES

25 TAC §§295.301 - 295.338

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§295.301 - 295.338, concerning the regulation of mold-related activities that affect indoor air quality. The amendments to §§295.301, 295.308 - 295.310, 295.312, 295.313, 295.315, 295.318, 295.325 - 295.327 and 295.338 are adopted with changes to the proposed text as published in the December 8, 2006, issue of the *Texas Register* (31 TexReg 9802). The amendments to §§295.302 - 295.307, 295.311, 295.314, 295.316, 295.317, 295.319 - 295.324, and 295.328 - 295.337 are adopted without changes and, therefore, these sections will not be republished.

BACKGROUND AND PURPOSE

The amendments implement three House Bills (HB) passed during the 79th Legislature, Regular Session (2005). House Bill 74 added §1958.155(d) to the Occupations Code, which allows licensed school district employees to perform both mold assessment and mold remediation on the same project for their school district. House Bill 1328 amended §1958.154(b) of the Occupations Code to require the seller of a property to provide the Certificate of Mold Damage Remediation to the buyer only if issued within the preceding five years. House Bill 2746 added §1958.105(b) to the Occupations Code, which requires lowering the passing grade for the state exam from 80% to 70%. For consistency with this legislative requirement, the passing grade requirement for exams given in accredited training courses is lowered from 80% to 70%.

Other amendments delete language that has expired; revise the language to reflect changes in the name and function of the agency, programs, and staff; clarify the legislative intent; correct incorrect language; revise the fee information to reflect the two-year license as standard and adds the Texas Online subscription fee; reduce the number of questions for the refresher course test; change the notification requirements to enable a more effective on-site investigation; and correct grammatical and punctuation errors in the rules. Expired language in the rules that refers to requirements applicable only prior to January 1, 2005, was deleted. An unnecessary requirement requiring about half the renewing licensees to take an additional refresher course caused by staggering the one-year and two-year license renewals was deleted. Agency contact information was added. Additions or rewording were made to provide better clarity or to remove unnecessary restrictions on the applicants.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 295.301 - 295.338 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

In §295.301, a new subsection (e) was added to provide agency contact information and summarize information available on the website.

In §295.302, Definitions, a new definition, "Certificate of Mold Damage Remediation," was added to clarify that the certificate referred to in the rules is the one provided by the Texas Department of Insurance (TDI). In the definition of "Facility," the word "structure" was deleted, as it was redundant and confusing. The new definition of "Managing agent" was added to clarify the intent of this term. The definitions of "Project" and "Start date" were reworded to be clearer. Language was added to the definition of "Start date" to clarify that preparation work is not considered part of mold remediation. The definition of "Stop date," was reworded for clarity. In the definition of "Supervise," the language "within ten minutes" was added after "accessible by telephone" to ensure adequate supervision is available when necessary.

In §§295.302, 295.308(b), 295.309(b), 295.310(c), 295.318(b)(3), and 295.325(b), language affected by the agency's reorganization was revised to reflect the changes. For example, in §295.302, the definitions of "Commissioner" and "Department" were reworded to be consistent with the new agency's name. The definition of "Program Administrator" was deleted, as the position no longer exists after the reorganization. In the other sections, all references to Program Administrator were reworded to the appropriate new contact; the "Texas Department of Health" was changed to "Department of State Health Services"; invalid telephone numbers were deleted; and obsolete division and program names were replaced with the appropriate new unit or group name.

In §§295.302(25), (26), (39), and (40), 295.308(a)(2), and (g), 295.309(c)(1), (d), and (d)(2), 295.315(f), (f)(5), and (9), 295.322(d), 295.325(a) - (d), 295.330(c)(2), 295.334(b), 295.335(c), 295.336 and 295.337, punctuation, grammar, and minor language changes (rewording, additions, and deletions) were made to improve the clarity of the sections.

In §295.303(f), the second sentence was reworded to clarify that only unlicensed and supervised persons doing mold remediation are required to be registered, but not those doing assessment.

In §295.304(b)(1), the word "license" was replaced by the broader word "credential."

In §295.305(e)(2) and (3), the phrase "and no earlier than 12 months prior to the expiration date of the license," and in §295.305(g)(3), the phrase "before the expiration date of the license but no earlier than 12 months prior to the expiration date of the license and" were deleted because this requirement caused an extra and unnecessary refresher training for a significant number of licensees and registrants.

In §§295.305(e)(1) - (3) and (h), 295.308(a)(2), 295.310(a)(2), 295.311(a), (c), and (e), 295.312(a), (c), and (e), 295.314(a), 295.315(a), (c), and (e), and 295.316(a), the expired language in these paragraphs was deleted and reworded as necessary for clarity. Language that referred to activities that were grandfathered (applicable only before January 1, 2005) was deleted in these paragraphs.

In §§295.305(f), 295.310(a)(1) and (e), 295.311(e)(1)(D), and 295.312(e)(1)(C), the passing grade for the state exam was lowered from 80% to 70% as required by the legislation. In §295.315(e)(1)(D), the 70% requirement for passing the state exam was added for clarity. To be consistent with this state

exam requirement, in §295.318(b)(10) and §295.320(g), the passing score requirement for the training providers was lowered from 80% to 70%.

In §295.306(c), the language "and the property owner, if not the same" was added so that the property owner must be given a copy of the Consumer Mold Information Sheet.

In §295.306(d), the language was changed to allow credentialed persons to give notification of violations by the next business day instead of within 24 hours.

In §295.307, a new subsection (c) was added to allow licensed school district employees to perform both mold assessment and mold remediation on the same project for their school district as required by the legislation.

In §295.308(a)(2), the wording was changed so only individuals that are applying for credentials are required to submit facial photographs. Also, the wording "one-inch by one-inch" was replaced with "one-inch square" for consistency with other sections of the rules.

In §§295.308(a)(2), 295.318(f)(6)(C) and (7)(B), and 295.320(d)(5)(B), the language "passport-quality color" was added before the word "photograph" to indicate the quality of photograph required by the department.

In §295.308(c) and §295.319(c), language was added to let the credentialed persons know that they have 90 days to respond to a department deficiency notice or the application will be denied.

In §295.308(e), language was added to let the credentialed persons know that they are responsible "to renew their credential whether or not they have received the notification from the department."

In §295.309(b), the notice of cancellation for insurance policies was changed from a 30-day to 10-day period to conform to standard policies and lower the cost.

In §295.309(d)(2), the language "the policy shall promptly be renewed or replaced without any lapse in coverage" was deleted because the policy only needs to be replaced if the licensee continues in the business.

In §295.310(f), the wording was changed to allow the department to provide either written or verbal analysis of the state exam.

In §§295.311(d), 295.312(d), 295.313(d), 295.314(c), 295.315(d), 295.316(c), 295.317(d), and 295.318(d), the fee rates were revised to reflect the two-year license and the Texas Online subscription fee requirements.

In §§295.312(b)(9) and (f)(11), 295.313(f)(9), 295.315(f)(12), 295.326(c)(2)(C), title of §295.327, 295.327(b), 295.338(a) and (b), every use of the words "certificate of mold remediation" was changed to the words "Certificate of Mold Damage Remediation" to clarify that the certificate referred to in the rules is the same one provided by the TDI.

In §295.315(e)(1)(C), the application submittal time after completing the initial training course was increased from six months to twelve months as six months was determined to be unnecessarily restrictive.

In §295.315(f), a new paragraph (1) was added to clarify that the "supervision of mold remediation workers" is a primary responsibility of the mold remediation contractor.

In §295.315(f)(5) and §295.316(e)(3), the language "preparation work" after "mold remediation" was added to clarify that providing the information is required before any work begins.

In §295.315(f)(9), the phrase "who conduct activities specified under paragraph (4) of this subsection" was deleted as incorrect and unnecessary.

In §295.318(b)(1), the language "Training provider's courses for mold remediation workers may use only department-approved instructors" was added to clarify the rule's intent.

In §295.318(f)(6)(C), (7)(B) and (C) and §295.320(d)(4)(B) and (5)(B), the word "photo" was replaced with "photograph" for consistency and clarity.

In §295.318(f)(7)(C), the word "color" was added to indicate what type of photograph is required.

In §295.319(c), the notification time for the department to acknowledge receipt of the application was changed from 30 to 10 working days. The words "After review of the application, the department will" were added to indicate when the applicant would be notified of the deficiencies. The words "within 60 days" were added to indicate when an application would be approved or denied after receipt of a complete application.

In §295.319(c)(8)(A), the term "school's" was replaced with the more descriptive term "training facility's."

In §295.320(d), the words "work on a" and "project" were deleted to clarify that it is the "mold remediation" not a "project" that is regulated.

In §295.320(g), the word "initial" was added before the words "test" and "tests" and the sentence "The refresher tests shall consist of at least ten questions" was added to reduce the number of refresher test questions.

In §295.321(e), language was added to clarify that the mold remediation protocol is specific to each project.

In §295.321(e)(4), language was added to clarify that the respirator is recommended during all mold-related activities when exposure to mold could or would be possible.

In §295.322(b), language was added to clarify that the work plan is specific to each project, fulfills the requirements of the mold remediation protocol, and contains the specific instructions or operating procedures.

In §295.322(e), language was added to clarify that signage is required for mold remediation projects at all accessible entrances.

In §295.323(c), language was added to clarify that registered workers shall follow all requirements regarding use of disinfectants.

In §295.324(a), language was changed to clarify that containment is used "during remediation."

In §295.325(a) - (d), language was added to clarify that notification is required only for mold remediation, and that the start time and stop time must be included on the notification form. The word "project" or "activity" was deleted after "mold remediation" to avoid confusion between the meaning of "remediation" and "project," for consistency and to clarify the intent. The words "as defined in §295.302(27)" were added after the words "mold remediation" to clarify the intent. Language was added to clarify that information from "the most recent notice" must be used. The language "with the department by phone" after the word "confirm" was added to specify who and how the contractor needs

to confirm the information. The language "for each week (seven calendar day period)" was deleted, as it does not allow the department adequate notification to investigate remediation work.

In §295.326(a), the language "a period of three years..." was deleted as it was confusing, and was replaced with "the time specified in subsection (b)(2) of this section for remediators, subsection (c)(2) of this section for assessors, subsection (d) of this section for mold analysis laboratories, and subsection (e)(1) of this section for training providers" that directs licensees to the correct information.

In §295.326(c)(1)(A), the word "certificate" was replaced with the correct word "credential" because it is a broader term.

In §295.327(d), the language was reworded to reflect that the seller of a property is required to provide the Certificate of Mold Damage Remediation to the buyer only if issued within the preceding five years.

In §295.328, the language "The complaint form is available on the department's website" was added to indicate where the form is available.

In §295.329(c), the wording "in pursuance of" was replaced with the word "conducting" and the words "in advance" were added after the word "notify" for clarity.

In §295.330(a) and (c), the language relating to suspending credentials on an "emergency basis" was deleted because it is not supported by the statute.

In §295.331(d)(1), (2) and (3), the word "safety" was deleted as potentially confusing because of language in Occupations Code, §1958.058.

In §295.332(a), the word "conclusive" was deleted as unnecessary because it was too strict a standard.

In §295.333(d), the language "exercise the opportunity for" was replaced with "request" to clarify and simplify. The language "the penalty imposed" was added for clarity.

In §295.334(a), the language "Chapter 2001" was deleted as repetitive.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were one individual, one school district (Katy Independent School District), and four companies (Cole Technologies, EFI Global, Inc., Enviro-Con Services, Inc., and J3 Resources, Inc). One commenter was against the rules in their entirety but had no recommendations for changes. The other commenters were not against the rules in their entirety; however, they suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning the rules in general, one commenter noted that the terminology for the Consumer Mold Information Sheet and the Certificate of Mold Damage Remediation should be uniform throughout.

Response: The commission agrees and changes were made throughout the rules to make the terms consistent. In §295.301(e), the word "Mold" was added to correct the title to: "Consumer Mold Information Sheet." In §§295.312(b)(9) and (f)(11), 295.313(f)(9), 295.315(f)(12), 295.326(c)(2)(C),

295.327(b) and (d), and 295.338(a) and (b), all references to the "Certificate of Mold Damage Remediation" were reworded to read the same.

Comment: Concerning the rules in general, one commenter noted that the word "building" is not defined and, therefore, the word "facility", which is defined, should be used in place of the word "building".

Response: The commission disagrees because this comment does not specifically address these amendments and will not be considered at this time, but will be considered in future rule changes. No change was made to the rules as a result of this comment.

Comment: Concerning §295.302, one commenter requested the word "client" be defined to clarify who exactly the client is.

Response: The commission disagrees because this comment does not specifically address these amendments and will not be considered at this time, but will be considered in future rule changes. No change was made to the rule as a result of this comment.

Comment: Concerning §295.302(6), one commenter wanted the terminology used by the TDI on the Certificate of Mold Damage Remediation (CMDR) to be the same as that in the Texas Mold Assessment and Remediation Rules.

Response: The commission agrees in part. The name of the CMDR in the proposed rules was changed to agree with that used by the TDI. The language each agency uses is based on its statute. The department does not have the authority to require the TDI to use specific language or documentation. No change was made to the rule as a result of this comment.

Comment: Concerning §295.302(40), one commenter did not want the definition of "stop-date" to be changed as it is unnecessary and will add more confusion to companies having to comply with both the Texas Asbestos Rules and the Mold Rules, which define the term differently.

Response: The commission disagrees. The change made in the proposed rules did not change the intent of the previous definition, but is a clarification of language to make it easier to understand. No change was made to the rule as a result of this comment.

Comment: Concerning the definition of "stop-date" in §295.302(40), one commenter suggested the definition of "stop-date" be changed to "the date clearance is achieved for the project," not the day after clearance as presently defined, because the proposed definition would be consistent with the same definition in the asbestos rules.

Response: The commission disagrees with the comment. In §295.325(d), the contractor is required to notify the department 24 hours prior to any change in the "stop-date." If, however, clearance is achieved a day or more before the scheduled stop-date, the contractor would not have adequate time to notify the department of the new stop date and would be in violation of the rules. The definition gives the contractor time to notify the department. No change was made to the rule as a result of this comment.

Comment: Concerning §295.302(44), one commenter requested that the definition of "training hours" be changed to include a lunch period as part of the training hours, because a "class from 8:00 a.m. to 4:00 p.m. is plenty of time to cover all

subjects." The commenter noted that lunch is included under this definition in the asbestos rules.

Response: The commission disagrees because the number of training hours specified in the rules is necessary to adequately cover the required subject material. No change was made to the rule as a result of this comment.

Comment: Concerning §295.303(a)(1), one commenter would like the department to change the rules to exclude mold found during routine maintenance in school districts.

Response: The commission disagrees because Texas Occupations Code, §1958.002(b), does not allow the department to make this change. No change was made to the rule as a result of this comment.

Comment: Concerning §295.303(b), one commenter asked if the department thought the 25 square feet limit would be changed.

Response: The commission disagrees because Texas Occupations Code, §1958.102(c), specifically established the limit to be an area of 25 contiguous square feet, and the rule text cannot be changed. No change was made to the rule as a result of this comment.

Comment: Concerning §295.303(f), one commenter wanted to delete the phrase "mold assessment or" from the subsection. The commenter stated that it is a loophole for consultants not to be required to have their employee licensed as a technician.

Response: The commission disagrees because Texas Occupations Code, §1958.102(b), requires this wording and this exemption. No change was made to the rule as a result of this comment.

Comment: Concerning §295.305(d), one commenter requested that a requirement be added that a training provider must also maintain an office in Texas. The commenter stated that this obligation is the only way for a state inspector to have access to training records, because the commenter believes the staff does not have the money to travel out-of-state to audit training providers.

Response: The commission disagrees because this comment does not specifically address these amendments and will not be considered at this time, but will be considered in future rule changes. No change was made to the rule as a result of this comment.

Comment: Concerning §295.305(g), one commenter did not understand what is meant by the word "approval." The commenter thinks the word "credential" covers licenses, accreditations and registrants.

Response: The commission disagrees and clarifies that the word "approval" refers to "approving" the instructors or courses submitted by training providers as required in the rules. No change was made to the rule as a result of this comment.

Comment: Concerning §295.305(g)(3), one commenter requested a change to the refresher course requirements to give a grace period if a licensee is unable to take the refresher course within the required time period instead of having to take the 40-hour initial course again.

Response: The commission disagrees because there is already a 180 day period in §295.308(g), which includes time for taking the required refresher course if necessary. No change was made to the rule as a result of this comment.

Comment: Concerning §295.305(i) and §295.306(b), one commenter requested a requirement for all credentialed individuals to have their trainer-issued ID cards present at the worksite because it would enable the state inspectors to verify if the individual's training is valid during a site inspection. Without the trainer's ID card, the inspector cannot determine if the credentialed person's training is valid.

Response: The commission disagrees because this comment does not specifically address these amendments and will not be considered at this time, but will be considered in future rule changes. No change was made to the rules as a result of this comment.

Comment: Concerning §295.307(c), one commenter requested rewording this subsection to allow school districts to share licenses between different school districts. For example, if one district does not have any or enough licensed mold assessors or remediators to address its mold problem, the district could call on another school district that has the needed licensed individuals to work on its project.

Response: The commission disagrees because the statute does not allow the department to make this change. The statute, Texas Occupations Code, §1958.155(d), contains the language repeated in the rule. No change was made to the rule as a result of this comment.

Comment: Concerning §295.309(a), one commenter stated that the requirement to have a \$1,000,000 liability insurance policy should not be required for consultants who may never oversee remediation or, even if they do, the liability insurance should be only the remediator's duty. The commenter's concern is the cost of the insurance.

Response: The commission disagrees because this comment does not specifically address these amendments and will not be considered at this time, but will be considered in future rule changes. No change was made to the rule as a result of this comment.

Comment: Concerning §295.317(a), one commenter requested a requirement for all branches of a licensed mold laboratory to be individually licensed instead of issuing one license that covers the main and all branch laboratories. The commenter's concern is the licensed laboratory could open a branch laboratory at another location that may not have the same qualified personnel as the main laboratory. The commenter feels these branch facilities should be required to demonstrate the same competence to perform the analysis as the main facility.

Response: The commission disagrees because this comment does not specifically address these amendments and will not be considered at this time, but will be considered in future rule changes. No change was made to the rule as a result of this comment.

Comment: Concerning §295.318(b)(2)(A), one commenter requested for training providers to combine the refresher course for the mold assessment consultants with that of the mold assessment technicians. The commenter feels the lack availability of refresher courses for the technicians is a problem and combining the courses would resolve this problem. The commenter felt the small differences in the training requirements for these two licensees could be handled without confusing the students.

Response: The commission disagrees because this comment does not specifically address these amendments and will not be considered at this time, but will be considered in future rule

changes. No change was made to the rule as a result of this comment.

Comment: Concerning §295.324(a), one commenter requested to allow a mold assessment technician to do a post-remediation visual or clearance testing on site without on-site supervision by a mold assessment consultant. The commenter felt that if technicians can do the initial assessment, including collecting samples and measurements and developing the scope of work/recommendations for the final report, then they could do the clearance visual and sampling without a consultant being on site.

Response: The commission disagrees because the mold assessment technician may not be adequately trained or may not have the necessary experience to handle this responsibility. No change was made to the rule as a result of this comment.

Comment: Concerning §295.326(c)(1)(A), one commenter believed the proposed language was to change the word "credential" to "certificate" and wanted the word "credential" used instead because it was more accurate.

Response: The commission agrees with the commenter's intent. However, in the section cited, the proposed language did not meet the intent of the commenter, but the error of concern was found in §295.308(e) and the change was made.

The department staff, on behalf of the commission, has corrected the following typographical errors and the commission has reviewed and agrees to the following corrections.

Concerning §§295.308(b), 295.309(b), 295.310(c), and 295.318(b)(3), the title "Environmental Sanitation Licensing Group" was corrected to "Environmental and Sanitation Licensing Group."

Concerning §295.325(a), the referencing for "§295.302(27)" was corrected to "§295.302(28)."

Concerning §295.308(b), the website www.tdh.state.tx.us/beh/mold was changed to www.dshs.state.tx.us/mold.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized by Texas Occupations Code, §1958.053, which allows the department to adopt rules; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department, and for the administration of Texas Health and Safety Code, Chapter 1001. Review of the sections implements Texas Government Code, §2001.039.

§295.301. *General Provisions.*

(a) Purpose. This subchapter implements the provisions of the Texas Occupations Code, Chapter 1958 (relating to Mold Assessors and Remediators), concerning the regulation of mold assessors and remediators conducting mold-related activities that affect indoor air quality.

(b) Scope. This subchapter contains requirements for the licensing and registration of persons performing mold assessments and mold remediation, requirements for the accreditation of mold training providers, minimum work standards for the conduct of mold assessments and remediation by licensed and registered persons, a code of ethics, and penalties.

(c) Severability. Should any section or subsection in this subchapter be found to be void for any reason, such finding shall not affect any other sections.

(d) TexasOnline. The department is authorized to collect subscription and convenience fees, in amounts determined by the TexasOnline Authority, to recover costs associated with processing applications, examinations, and notifications specified under this subchapter through TexasOnline, in accordance with the Texas Government Code, Chapter 2054, §2054.111 (relating to Use of TexasOnline Project).

(e) Department information. For the most recent telephone and facsimile numbers for contacting or submitting information to mold notification and licensing personnel, visit the department's website: www.dshs.state.tx.us/mold. From this website you can also view and/or download the mold rules and applicable legislation; application, notification, and complaint forms; Consumer Mold Information Sheet; Certificate of Mold Damage Remediation; listing of current licensees and accredited trainers; and Frequently Asked Questions. The telephone numbers for general questions are (800) 572-5548 (toll-free), or (512) 834-6770.

§295.308. *Credentials: Applications and Renewals.*

(a) General requirements. Applications for a license, registration or accreditation must be made on forms provided by the department and signed by the applicant. The department shall consider only complete applications. The application form must be accompanied by:

(1) a check or money order for the amount of the required fee made payable to the department, unless the application fee is paid through TexasOnline, as provided under the Texas Government Code, Chapter 2054, §2054.252 (relating to TexasOnline Project);

(2) for individuals applying for a credential, a current one-inch square passport-quality color photograph of the applicant's face with a white background. A copy of the wallet-size photo-identification card from the applicable training course as required under §295.318(f)(6)(B) of this title (relating to Mold Training Provider: Accreditation) must also be submitted; and

(3) proof that the applicant meets all other requirements for obtaining the credential being sought.

(b) Inquiries. Applicants who wish to discuss or obtain information concerning qualification requirements may contact the Department of State Health Services, Environmental and Sanitation Licensing Group. Applicants may visit the Mold Licensing Program's website at www.dshs.state.tx.us/mold to obtain information and download forms.

(c) Denials. The department may deny a credential to a person who fails to meet the standards established by this subchapter. Failure of the applicant to submit the required information and/or documentation within 90 days of issuance of a written notice of deficiency from the department will result in the application being denied.

(d) Processing applications and renewals.

(1) Reimbursement of fees. The department shall refund application fees, less an administrative fee of \$50 (\$20 for remediation worker applications), if an applicant does not meet the requirements for the credential. The department shall refund fees paid in excess of the amounts required under this subchapter, less a \$10 administrative fee. The department will not refund fees if the application was abandoned

due to the applicant's failure to respond to a written request from the department for a period of 90 days.

(2) **Contested case hearing.** The applicant has the right to request a hearing in writing within 30 days of the date on the department's letter denying the credential. The hearing will be conducted in accordance with the Administrative Procedure Act (Texas Government Code, Chapter 2001) and the department's formal hearing rules in Chapter 1 of this title.

(e) **Renewal notices.** At least 60 days before a person's license, registration, or accreditation is scheduled to expire, the department shall send a renewal notice by first-class mail to the person's last known address from the department's records. A person credentialed by the department retains full responsibility for supplying the department with a correct current address and phone number, and to take action to renew their credential whether or not they have received the notification from the department. The renewal notice will state:

- (1) the type of credential requiring renewal;
- (2) the time period allowed for renewal;
- (3) the amount of the renewal fee; and
- (4) how to obtain and submit a renewal application.

(f) **Renewal requirements.** A person seeking to renew a license, registration, or accreditation shall submit a renewal application no sooner than 60 days before the credential expires. The department shall renew the license, registration, or accreditation for a term as provided under §295.305(h) of this title (relating to Credentials: General Conditions) if the person:

- (1) is qualified to be credentialed;
- (2) pays to the department the nonrefundable renewal fee;
- (3) submits to the department a renewal application on the prescribed form along with all required documentation; and
- (4) has complied with all final orders resulting from any violations of this subchapter, unless an exception is granted in writing by the department and submitted with the application.

(g) **Renewals.** A person shall not perform any mold-related activity with an expired license, registration, or accreditation. If a person makes a timely and complete application for the renewal of a valid credential, the credential does not expire until the department has finally granted or denied the application. The department shall renew a credential that has been expired for 180 days or less if the person meets the requirements of subsection (f) of this section. A person whose credential has been expired for more than 180 days must obtain a new credential and must comply with current requirements and procedures, including any state examination requirements.

(h) **Replacements.** A person desiring a replacement credential or ID card shall submit a request in writing on a department-issued form with a \$20 fee.

§295.309. Licensing: Insurance Requirements.

(a) Persons required to have insurance must, at a minimum, obtain policies for commercial general liability insurance in the amount of not less than \$1 million per occurrence. Governmental entities that are self-insured are not required to purchase insurance under this subchapter. A non-governmental entity (business entity or individual) may be self-insured if it submits to the department for approval an affidavit signed by an authorized official of the entity or by the individual stating that it has a net worth of at least \$1 million. A current financial statement indicating a net worth of at least \$1 million must accompany the affidavit. A new affidavit and current financial statement must be

submitted with each renewal application. An individual required to have insurance must obtain individual coverage unless covered under the policy of the individual's employer or employed by a governmental entity or a person approved by the department to be self-insured. Insurance policies required under this section must be currently in force and must be written by:

- (1) an insurance company authorized to do business in Texas;
- (2) an eligible Texas surplus lines insurer as defined in the Texas Insurance Code, Article 1.14-2 (relating to Surplus Lines Insurance);
- (3) a Texas registered risk retention group; or
- (4) a Texas registered purchasing group.

(b) The certificate of insurance must be complete, including all applicable coverages and endorsements, and must name the Department of State Health Services, Environmental and Sanitation Licensing Group, as a certificate holder. Each required policy shall be endorsed to provide the department with at least a 10-day notice of cancellation or material change for any reason.

(c) An applicant for an initial or renewal license must provide proof of insurance in one of the following forms:

- (1) a copy of the required current certificate of insurance;
- (2) if claiming to be self-insured, a statement that it is a governmental entity, or, if a non-governmental entity, the affidavit and current financial statement described under subsection (a) of this section; or
- (3) proof that the applicant is employed by a licensed mold assessment or remediation company that has the required insurance.

(d) The department may impose an administrative penalty or take other disciplinary action against any person who fails to have the current insurance required under this section.

(1) If a policy is canceled or materially changed, the licensee shall notify the department in writing not later than 20 calendar days prior to the change or cancellation effective date. A licensed company may file a single notification for the company and its licensed employees.

(2) If a policy expires or is canceled or materially changed, the licensee shall cease work. Prior to resuming work, the licensee must either:

- (A) provide to the department a certificate of the renewal or replacement policy; or
- (B) submit to the department the affidavit and current financial statement described under subsection (a) of this section and receive departmental approval to be self-insured.

(3) If an individual licensee ceases to be covered under an employer's insurance, the individual must obtain replacement coverage either individually or through a new employer. The individual must submit the documentation required under subsection (c) of this section to the department before engaging in any mold-related activities.

§295.310. Licensing: State Licensing Examination.

(a) **Examination requirements.** An applicant for an initial individual license who has successfully completed the required training course from a department-accredited training provider must pass the state examination with a score of at least 70% correct prior to applying for the license. The applicant must pass the examination within six months of completing the training course.

(b) Re-examination. An individual is permitted to take two re-examinations after failing an initial examination. An individual who fails both re-examinations must repeat the initial training course, submit a new application for the state examination, and provide a copy of the new training certificate.

(c) Scheduling and registration. Annually, the department shall publish a schedule of examination dates and locations. Training providers shall provide state examination schedules as a part of their instruction. Registrations must be submitted by mailing, faxing, or e-mailing a registration form to the Department of State Health Services, Environmental and Sanitation Licensing Group and must be received by the department no later than five working days before the examination date. Information on the examination schedule and assistance with registration is available by contacting the Department of State Health Services, Environmental and Sanitation Licensing Group. Entrance into the examination site will be allowed only upon presentation of a valid photo identification from an accredited training provider. Companies with 30 or more employees to be tested may call the department to arrange an additional examination date for a \$50 per person examination fee.

(d) Fees. A fee of \$25 is required for any examination or re-examination. A fee of \$50 per person shall be paid for examinations administered at locations and times other than those published. The department must receive the required fees no later than five working days before the examination.

(e) Grading and reporting of examination scores. A grade of at least 70% correct must be achieved in order to pass the examination. Scores will be reported only by mail no later than 30 working days after the date the examination is taken. Information regarding re-examination, if necessary, will be included.

(f) Request for information concerning examination. If requested in writing by an individual who fails a licensing examination, the department shall furnish the individual with an analysis of the individual's performance on the examination.

§295.312. Mold Assessment Consultant: Licensing Requirements.

(a) Licensing requirements. Unless exempted under §295.303 of this title (relating to Exceptions and Exemptions), an individual must be licensed as a mold assessment consultant to perform activities listed under subsection (b) of this section. A licensed mold assessment consultant who employs two or more individuals required to be licensed under this section or §295.311 of this title (relating to Mold Assessment Technician: Licensing Requirements) must be separately licensed as a mold assessment company under §295.313 of this title (relating to Mold Assessment Company: Licensing Requirements), except that an individual licensed as a mold assessment consultant and doing business as a sole proprietorship is not required to be separately licensed under §295.313 of this title.

(b) Scope. An individual licensed under this section is also licensed to perform all activities of a mold assessment technician listed in §295.311(b) and (f) of this title. In addition, a licensed mold assessment consultant is licensed to:

- (1) plan surveys to identify conditions favorable for indoor mold growth or to determine the presence, extent, amount, or identity of mold or suspected mold in a building;
- (2) conduct activities recommended in a plan developed under paragraph (1) of this subsection and describe and interpret the results of those activities;
- (3) determine locations at which a licensed mold assessment technician will record observations, take measurements, or collect samples;

(4) prepare a mold assessment report, including the observations made, measurements taken, and locations and analysis results of samples taken by the consultant or by a licensed mold assessment technician during the mold assessment;

(5) develop a mold management plan for a building, including recommendations for periodic surveillance, response actions, and prevention and control of mold growth;

(6) prepare a mold remediation protocol, including the evaluation and selection of appropriate methods, personal protective equipment (PPE), engineering controls, project layout, post-remediation clearance evaluation methods and criteria, and preparation of plans and specifications;

(7) evaluate a mold remediation project for the purpose of certifying that mold contamination identified for the remediation project has been remediated as outlined in a mold remediation protocol;

(8) evaluate a mold remediation project for the purpose of certifying that the underlying cause of the mold has been remediated so that it is reasonably certain that the mold will not return from that remediated cause; and

(9) complete appropriate sections of a Certificate of Mold Damage Remediation as specified under §295.327(b) of this title (relating to Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner).

(c) Qualifications. In addition to the requirements for all applicants listed in §295.305 of this title (relating to Credentials: General Conditions) and §295.309 of this title (relating to Licensing: Insurance Requirements), an applicant must meet at least one of the following education and/or experience requirements:

(1) a bachelor's degree from an accredited college or university with a major in a natural or physical science, engineering, architecture, building construction, or building sciences, and at least one year of experience in an allied field;

(2) at least 60 college credit hours with a grade of C or better in the natural sciences, physical sciences, environmental sciences, building sciences, or a field related to any of those sciences, and at least three years of experience in an allied field;

(3) a high school diploma or a General Educational Development (GED) certificate and at least five years of experience in an allied field; or

(4) certification as an industrial hygienist, a professional engineer, a professional registered sanitarian, a certified safety professional, or a registered architect, with at least one year of experience in an allied field.

(d) Fees. The fees for a mold assessment consultant license are:

- (1) \$600 for the license; and
- (2) a required Texas Online subscription and convenience fee.

(e) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include the following in the application package:

- (1) if the application is for an initial license:

(A) verifiable evidence that the applicant meets at least one of the eligibility requirements under subsection (c)(1) - (4) of this section;

(B) proof of compliance with the insurance requirement specified in §295.309 of this title;

(C) proof of successfully passing the state licensing examination with a score of at least 70% correct; and

(D) a copy of a certificate of training as described in §295.320(c) of this title (relating to Training: Required Mold Training Courses); or

(2) if the application is for renewal of a license:

(A) a copy of a certificate of training as described in §295.320(g) of this title, unless the applicant is exempt under §295.305(g)(3) of this title; and

(B) proof of compliance with the insurance requirement specified in §295.309 of this title.

(f) Responsibilities. In addition to the requirements listed in §295.306 of this title (relating to Credentials: General Responsibilities), a licensed mold assessment consultant shall:

(1) provide adequate consultation to the client to diminish or eliminate hazards or potential hazards to building occupants caused by the presence of mold growth in buildings;

(2) provide, in accordance with a client's instructions, professional services concerning surveys, building conditions that have or might have contributed to mold growth, proper building operations and maintenance to prevent mold growth, and compliance with work practices and standards;

(3) comply with mold sampling protocols as presented in training course materials or as required by his/her employer;

(4) inquire of the client whether any hazardous materials, including lead-based paint and asbestos, are present in the project area;

(5) ensure that all employees who will conduct mold assessment activities are provided with, fit tested for, and trained in the correct use of personal protection equipment appropriate for the activities to be performed;

(6) ensure that the training and license of each licensed employee are current, as described in §295.320 of this title and §295.311 or §295.312 of this title, respectively;

(7) provide to the client a mold assessment report following an initial (pre-remediation) mold assessment. If the consultant includes the results of the initial assessment in a mold remediation protocol or a mold management plan, a separate assessment report is not required;

(8) provide to the client a mold remediation protocol before a remediation project begins;

(9) utilize the services of a laboratory that is licensed by the department to provide analysis of mold samples;

(10) if he/she performs post-remediation assessment on a project and ceases to be involved with the project before it achieves clearance, provide a final status report to the client and to the mold remediation contractor or company performing mold remediation work for the client as specified under §295.324(e) of this title (relating to Post-Remediation Assessment and Clearance);

(11) provide a passed clearance report to the client as specified under §295.324(d) of this title and complete applicable sections of a Certificate of Mold Damage Remediation as specified

under §295.327(b) of this title (relating to Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner);

(12) comply with recordkeeping responsibilities under §295.326(c) of this title (relating to Recordkeeping);

(13) sign and date each mold assessment report and each mold management plan that he/she prepares and include his/her license number and expiration date on each report and each plan;

(14) sign and date each mold remediation protocol on the cover page, including his/her license number and expiration date. The consultant must also initial the protocol on every page that addresses the scope of work and on all drawings related to the remediation work; and

(15) review and approve changes to any protocol by signing or initialing according to paragraph (14) of this subsection.

§295.313. Mold Assessment Company: Licensing Requirements.

(a) Licensing requirements. A person performing mold assessment work on or after January 1, 2005 must be licensed as a mold assessment company if the person employs two or more individuals required to be licensed under §295.311 of this title (relating to Mold Assessment Technician: Licensing Requirements) or §295.312 of this title (relating to Mold Assessment Consultant: Licensing Requirements), except that an individual licensed as a mold assessment consultant and doing business as a sole proprietorship is not required to be separately licensed under this section. A mold assessment company shall designate one or more individuals licensed as mold assessment consultants as its responsible person(s).

(b) Authorization and conditions. As a condition of licensure, a mold assessment company must:

(1) notify the department in writing of any changes in individual licensed mold assessment consultants as responsible persons within 10 days of such occurrences;

(2) maintain commercial general liability insurance, as described in §295.309 of this title (relating to Licensing: Insurance Requirements);

(3) refrain from mold assessment activity during any period without the active employment of at least one individual licensed mold assessment consultant designated as the responsible person for the company;

(4) notify the department in writing of any change related to a person who has an ownership interest of 10% or more (including additions to or deletions from any list of such persons previously supplied to the department and any changes in the names, addresses, or occupations of any persons on such a list) within 10 days of the change; and

(5) refrain from engaging in activity prohibited under §295.307(a) of this title (relating to Conflict of Interest and Disclosure Requirement).

(c) Eligibility for licensing. To be eligible for licensing, an applicant must:

(1) employ at least one licensed mold assessment consultant; and

(2) maintain an office in Texas.

(d) Fees. The fees for a mold assessment company license are:

(1) \$1,000 for the license; and

(2) a required Texas Online subscription and convenience fee.

(e) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include the following in the application package:

(1) proof of compliance with the insurance requirement specified in §295.309 of this title;

(2) the name, address, and occupation of each person that has an ownership interest of 10% or more in the company; and

(3) the name and license number of each licensed mold assessment consultant designated by the applicant as a responsible person.

(f) Responsibilities. In addition to the requirements as listed in §295.306 of this title (relating to Credentials: General Responsibilities), a licensed mold assessment company shall:

(1) follow the recordkeeping requirements, at both the Texas office and work site locations, as described in §295.326(c) of this title (relating to Recordkeeping);

(2) provide each client with a mold assessment report following an initial (pre-remediation) mold assessment. If the company includes the results of the initial assessment in a mold remediation protocol or a mold management plan, a separate assessment report is not required;

(3) provide each client a mold remediation protocol before remediation begins;

(4) ensure that all employees who will conduct mold assessment activities are provided with, fit tested for, and trained in the correct use of personal protection equipment appropriate for the activities to be performed;

(5) ensure that the training and license of each licensed employee are current, as described in §295.320 of this title (relating to Training: Required Mold Training Courses) and §295.311 or §295.312 of this title, respectively;

(6) utilize the services of a laboratory that is licensed by the department to provide analysis of mold samples;

(7) maintain commercial general liability insurance, as described in §295.309 of this title;

(8) if the company performs post-remediation assessment on a project and ceases to be involved with the project before it achieves clearance, provide a final status report to the client and to the mold remediation contractor or company performing mold remediation work for the client as specified under §295.324(e) of this title (relating to Post-Remediation Assessment and Clearance); and

(9) provide a passed clearance report to the client as specified under §295.324(d) of this title and provide a Certificate of Mold Damage Remediation, with applicable sections completed by a mold assessment consultant, to a mold remediation company or contractor, as specified under §295.327(b) of this title (relating to Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner).

§295.315. Mold Remediation Contractor: Licensing Requirements.

(a) Licensing requirements. Unless exempted under §295.303 of this title (relating to Exceptions and Exemptions), an individual must be licensed as a mold remediation contractor to perform activities listed under subsection (b) of this section. A licensed mold remediation contractor who employs one or more individuals required to be licensed under this section or §295.314 of this title (relating to Mold Remediation Worker: Registration Requirements) must be separately licensed as a mold remediation company under §295.316 of this title (relating

to Mold Remediation Company: Licensing Requirements), except that an individual licensed as a mold remediation contractor and doing business as a sole proprietorship is not required to be separately licensed under §295.316 of this title.

(b) Scope. An individual licensed under this section may perform mold remediation and supervise registered mold remediation workers performing mold remediation. In addition, a licensed mold remediation contractor is licensed to provide mold remediation services including:

(1) preparing a mold remediation work plan providing instructions for the remediation efforts to be performed for a mold remediation project; and

(2) conducting and interpreting the results of activities recommended in a work plan developed under paragraph (1) of this subsection, including any of the activities of a registered mold remediation worker under §295.314 of this title.

(c) Qualifications. In addition to the requirements for all applicants listed in §295.305 of this title (relating to Credentials: General Conditions) and §295.309 of this title (relating to Licensing: Insurance Requirements), an applicant must meet at least one of the following education and/or experience requirements:

(1) a bachelor's degree from an accredited college or university with a major in a natural or physical science, engineering, architecture, building construction, or building sciences and at least one year of experience either in an allied field or as a general contractor in building construction;

(2) at least 60 college credit hours with a grade of C or better in the natural sciences, physical sciences, environmental sciences, building sciences, or a field related to any of those sciences, and at least three years of experience in an allied field or as a general contractor in building construction;

(3) a high school diploma or General Educational Development (GED) certificate, plus at least five years of experience in an allied field or as a general contractor in building construction; or

(4) certification as an industrial hygienist, a professional engineer, a professional registered sanitarian, a certified safety professional, or a registered architect, with at least one year of experience either in an allied field or as a general contractor in building construction.

(d) Fees. The fees for a mold remediation contractor license are:

(1) \$500 for the license; and

(2) a required Texas Online subscription and convenience fee.

(e) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include the following in the application package:

(1) if the application is for an initial license:

(A) verifiable evidence that the applicant meets at least one of the qualifications under subsection (c)(1) of this section;

(B) proof of compliance with the insurance requirement specified in §295.309 of this title;

(C) a copy of a certificate of training indicating successful completion within the past twelve months of an initial training course offered by a department-accredited training provider as de-

scribed in §295.320(e) of this title (relating to Training: Required Mold Training Courses); and

(D) proof of successfully passing the state licensing examination with a score of at least 70% correct; or

(2) if the application is for renewal of a license:

(A) a copy of a certificate of training as described in §295.320(g) of this title, unless the applicant is exempt under §295.305(g)(3) of this title; and

(B) proof of compliance with the insurance requirement specified in §295.309 of this title.

(f) Responsibilities. In addition to the requirements as listed in §295.306 of this title (relating to Credentials: General Responsibilities), the mold remediation contractor shall be responsible for:

(1) supervising mold remediation workers as defined in §295.302(41) of this title (relating to Definitions);

(2) accurately interpreting field notes, drawings, and reports relating to mold assessments;

(3) advising clients about options for mold remediation;

(4) complying with standards for preparing mold remediation work plans, as presented in training course materials or as required by the mold remediation company by whom the contractor is employed;

(5) providing to a client a mold remediation work plan for the project before the mold remediation preparation work begins;

(6) inquiring of the client whether any known or suspected hazardous materials, including lead-based paint and asbestos, are present in the project area;

(7) signing and dating each mold remediation work plan that he/she prepares on the cover page. The cover page shall also include his/her license number and expiration date. He/she must also initial the work plan on every page that addresses the scope of work and on all drawings related to the remediation work;

(8) submitting the required notification to the department, as described in §295.325 of this title (relating to Notifications), unless employed by a licensed mold remediation company;

(9) ensuring that all individuals are provided with, fit tested for, and trained in the correct use of personal protection equipment required under §295.322(c) of this title (relating to Minimum Work Practices and Procedures for Mold Remediation);

(10) if the mold remediation contractor is doing business as a sole proprietorship and is not required to be separately licensed as a mold remediation company under §295.316 of this title:

(A) ensuring that the training, as described in §295.320 of this title (relating to Training: Required Mold Training Courses), and license of each employee who is required to be licensed under this subchapter is current;

(B) ensuring that the training, as described in §295.320 of this title, and registration of each registered employee is current;

(C) ensuring that each unregistered employee who is required to be registered under this subchapter is provided the training required under §295.320(d) of this title before performing any mold remediation work;

(D) complying with all requirements under §295.320(d) of this title if the contractor provides the training; and

(E) ensuring that a previously unregistered employee who is provided training as specified in subparagraph (C) of this paragraph:

(i) has applied to the department for registration before allowing that employee to perform any mold remediation work, except as provided under §295.314(e) of this title; and

(ii) is registered before allowing that employee to perform any mold remediation work more than 30 days after the date of the training, in accordance with §295.314(e) of this title;

(11) complying with recordkeeping responsibilities under §295.326 of this title (relating to Recordkeeping); and

(12) providing to the property owner a completed Certificate of Mold Damage Remediation as specified under §295.327 of this title (relating to Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner).

§295.318. Mold Training Provider: Accreditation.

(a) Accreditation requirement. A person must be accredited as a mold training provider to offer mold training courses that are prerequisites for licensing.

(b) Authorizations and Conditions. The following shall apply to issuance of accreditations under this section.

(1) No person shall advertise or offer as initial or refresher training courses, for fulfillment of requirements for licensing under this subchapter, any courses that the department has not approved under §295.319 of this title (relating to Training: Approval of Training Courses and Instructors). Accredited training providers may offer, without department approval, mold remediation worker training courses and other courses relevant to mold-related activities, including, but not limited to, courses on respirator training and compliance. Accredited training providers shall use only department-approved instructors for mold remediation workers training courses.

(2) Accredited training providers must offer approved courses as described below.

(A) Each initial and refresher course shall address only one licensee and shall not be combined with other areas of licensure. Initial training courses shall not be combined with refresher courses. This prohibition against combined training applies to hands-on training sessions as well as other aspects of the course.

(B) Each course shall be conducted in one language throughout and not combined with the same course taught in another language. A training provider may offer a course in a language other than English if all instructors and guest speakers are fluent in that language and all books, training materials, and course tests are in that language.

(3) Each accredited training provider shall submit schedules for approved training courses to the department at least 14 calendar days prior to the start of any course on the schedule. Requests for exceptions to the 14-day rule shall be submitted in writing to the Department of State Health Services, Environmental and Sanitation Licensing Group along with a written justification describing why the notice could not be submitted earlier. Approval requests for shorter notice must be received by the department 72 hours prior to the start of the course and will be granted in writing if approved. A training provider that cancels a scheduled course must notify the department in writing at least 24 hours prior to the scheduled start time of the course. The department will accept facsimiles of cancellation notices. If the training provider cannot provide written notice of cancellation at least 24 hours in advance, the training provider shall notify the department by phone not later than two hours after the scheduled class start time and provide a

written explanation of the short cancellation notice within 24 hours of the phone call.

(4) Training courses must be conducted during scheduled hours as notified in accordance with paragraph (3) of this subsection. Training providers shall not conduct any approved course for more than eight training hours (including hands-on portions) in a calendar day.

(5) A training provider must require instructors and guest speakers to present in person at least 50% of the classroom instruction and all of the hands-on instruction. The training provider may allow an instructor or guest speaker to use training films and videotapes, but audiovisual materials shall not be used as substitutes for the required in-person presentations or the hands-on instruction.

(6) Courses requiring hands-on practical training must be presented in an environment that permits each student to have actual experience performing tasks associated with the mold-related activity.

(7) The maximum number of students in a lecture session shall be 40. Hands-on training sessions shall maintain a student-to-instructor ratio of not more than 15 to one and must be conducted so that the instructor is able to assist and evaluate each student individually. Field trips shall maintain a student-to-instructor ratio of not more than 40 to one.

(8) Approved training courses shall be conducted in facilities acceptable as classrooms and conducive to learning. The facilities must have restrooms available for the students.

(9) Course instructors shall maintain a master attendance record for each course and take attendance at the beginning of each four-hour instruction segment. A student who is absent from more than 10% of the course instruction, including hands-on sessions and field trips, is ineligible to complete the course.

(10) An accredited training provider must verify and keep a written record of any student achieving a minimum score of 70% correct on each course test. The training provider shall have a written policy concerning the administration of tests, including allowing only one re-test per student for each course. The use of the same questions for both the original and re-test is not allowed. Oral tests are not allowed; however, a training provider may read the written test questions and possible answers to a student who must then mark his or her answer on an answer sheet. If a student fails the re-test, the student must repeat the course and pass a new test.

(11) Each training provider shall send at least one course instructor to any meeting held by the department for the purpose of ensuring quality training. The department shall hold no more than two such meetings per year.

(12) An individual instructor shall not train himself/herself to qualify for a license or a registration.

(c) Qualification. To qualify for an accreditation, each applicant:

(1) must have a written policy concerning refunds and cancellations in all languages in which training is offered. The refund and cancellation policy must be made available to students prior to payment of fees and shall include the cancellation procedures;

(2) shall employ a mold training manager who:

(A) meets at least one of the following requirements:

(i) at least two years of experience, education, or training in teaching workers or adults;

(ii) a bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public

health, education, or business administration or program management; or

(iii) at least two years of experience in managing an occupational health and safety training program specializing in environmental hazards; and

(B) has demonstrated experience, education, or training in mold assessment or remediation, lead or asbestos abatement, occupational safety and health, or industrial hygiene;

(3) shall provide for each course a qualified principal instructor who meets the requirements under §295.319 of this title; and

(4) must develop and implement a plan to maintain and improve the quality of the training program. This plan shall contain at least the following elements:

(A) procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

(B) procedures for the training manager's annual review of instructor competency.

(d) Fees. The fees for mold training provider accreditation are:

(1) \$1,000 for the accreditation; and

(2) a required Texas Online subscription and convenience fee.

(e) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include:

(1) for an initial accreditation, at least one complete application for approval of a training course and at least one complete application for approval of an instructor, as described under §295.319 of this title;

(2) for a renewal accreditation, a list of all of the training provider's courses and instructors currently approved by the department; and

(3) a description of the training provider's organization, including the address of its central office, the names and business addresses of its principals, a statement of any affiliation with another mold-related company doing business in Texas, and a listing of the courses to be offered. The organization shall designate a staff member as the mold training manager who meets the qualifications of subsection (c)(2) of this section.

(f) Responsibilities. In addition to the requirements listed in §295.306 of this title (relating to Credentials: General Responsibilities), an accredited mold training provider shall be responsible for:

(1) confirming, before enrolling a student in a refresher training course, that the student has successfully completed a previous training course in the same area of licensure within 24 months;

(2) maintaining the hands-on skills assessment to ensure that it accurately evaluates student performance of the work practices and procedures associated with the course topics contained in §295.320 of this title (relating to Training: Required Mold Training Courses);

(3) maintaining the validity and integrity of the course test to ensure that it accurately evaluates the student's knowledge and retention of the course topics;

(4) furnishing appropriate equipment in good working order and in sufficient quantities for each training session in which equipment is required;

(5) presenting to students all course information and material approved by the department;

(6) at the conclusion of each training course, providing to each student who successfully completes the course and passes the required test:

(A) a course-completion certificate as described in §295.319(c)(8) of this title;

(B) a wallet-size photo-identification card, indicating the course completed, the effective date, and a number identifier for the student;

(C) a current one-inch square passport-quality color photograph of the student's face on a white background taken during the course to be attached by the student to an application for licensing or registration; and

(D) a copy of the application and schedule for the state licensing examination;

(7) submitting to the department, within 10 working days of the completion date of each course:

(A) the names and number identifiers of each student who attended the course, on a form provided by the department;

(B) individual one-inch square passport-quality color photographs of the face of each student on a white background taken during the course; and

(C) a color group photograph taken at the end of the course that identifies which students did and did not pass the course. Digital or scanned images will be accepted. The group color photograph must be no smaller than a standard 3 1/2-inch by 4 1/4-inch print;

(8) documenting that each person who receives a certificate has successfully completed an initial course in accordance with §295.320 of this title and has achieved a passing score on the written test. The training provider must maintain a file for each course that includes the training course name, dates and area of licensure, the names of all instructors and guest speakers who taught the course, a roster of all students in the course, a copy of the course test and each student's name and graded answer sheet, the date and location where the test was administered, the name of the test proctor, the names of students receiving certificates, the certificate numbers, and the expiration date of the training. All information from the training course and test must correspond to the information on each person's course-completion certificate. All records under this section shall be available for inspection by the department immediately upon conclusion of the course and the test; and

(9) complying with all requirements under §295.320(d) of this title if the company provides training to individuals seeking registration as mold remediation workers and maintaining copies of the required training documents at a central location at its Texas office.

(g) Inspections and audits. Training providers shall permit department representatives to attend, evaluate, and monitor any training course, without charge or advance notice, to ensure compliance with this subchapter. The following criteria are grounds for suspending or withdrawing training provider accreditations or instructor approvals under §295.330 of this title (relating to Compliance: Reprimand, Suspension, Revocation, Probation) or for assessing administrative penalties under §295.331 of this title (relating to Compliance: Administrative Penalty):

(1) failure to adhere to the training standards and requirements of this subchapter;

(2) misrepresentation of the extent of approval of a training course or instructor;

(3) falsification of records or submitting false information to the department;

(4) failure to submit required information in a timely manner; or

(5) failure to comply with these regulations in a manner that demonstrates a lack of ability, capacity or fitness to perform training duties and responsibilities.

§295.325. *Notifications.*

(a) General provision. A mold remediation contractor or company shall notify the department of a mold remediation, as defined in §295.302(28) of this title (relating to Definitions), when mold contamination affects a total surface area of 25 contiguous square feet or more. Notification shall be received by the Department of State Health Services, Environmental Health Notifications Group no less than five working days (not calendar days) prior to the anticipated start date of the mold remediation and shall be submitted by United States Postal Service, commercial delivery service, hand-delivery, electronic mail (e-mail), or facsimile on a form specified by the department and available on its website. The form must be filled out completely and properly. Blanks that do not apply shall be marked "N/A". The "N/A" designation will not be accepted for identification of the work site, building description, building owner, individuals required to be identified on the notification form, start- and stop-dates, or scheduled hours of mold remediation. A signature of the responsible person is required on each notification form. The contractor or company shall retain a confirmation that the department received the notification.

(b) Start-date change to later date. When mold remediation activity is rescheduled to start later than the date or hours contained in the most recent notice, the regional office of the department shall be notified by telephone as soon as possible but prior to the start-date on the most recent notice. A written amended notification is required immediately following the telephone notification and shall be e-mailed, faxed or overnight mailed to the Environmental Health Notifications Group within the Inspection Unit, Environmental and Consumer Safety Section of the department.

(c) Start-date change to earlier date. When mold remediation activities begin on a date earlier than the date contained in the notice, the department shall be provided with written notice of the new start-date at least five working days before the start of work unless the provisions of subsection (e) of this section apply. The licensee shall confirm with the department by phone that the notice is received five working days before the start of work.

(d) Start-date/stop-date (completion date) requirement. In no event shall mold remediation begin or be completed on a date other than the date contained in the written notice except for operations covered under subsection (e) of this section. Amendments to start-date changes must be submitted as required in subsections (b) and (c) of this section. An amendment is required for any stop-dates that change by more than one workday. The contractor or company shall provide schedule changes to the department no less than 24 hours prior to the most recent stop-date or the new stop-date, whichever comes first. Changes less than five days in advance shall be confirmed with the appropriate department regional office by telephone, facsimile, or e-mail and followed up in writing to the department's central office at 1100 West 49th Street, Austin, Texas, 78756.

(e) Provision for emergency. In an emergency, notification to the department shall be made as soon as practicable but not later than the following business day after the license holder identifies the emer-

gency. Initial notification shall be made to the department's central office either immediately by telephone, followed by formal notification on the department's notification form, or immediately by facsimile on the department's notification form. The contractor or company shall retain a confirmation that the notification was received by the department. Emergencies shall be documented. An emergency exists if a delay in mold remediation services in response to a water damage occurrence would increase mold contamination.

(f) Notification fees.

(1) For each initial notification of a mold remediation project, the mold remediation contractor or company shall remit to the department a fee of \$100, except that the fee shall be \$25 for a remediation project in an owner-occupied residential dwelling unit. Amendments to a notification shall not require a separate fee.

(2) The department shall send an invoice for the required fee to the contractor or company after the department has received the notification. Payment must be remitted in the manner instructed on the invoice no later than 60 working days following the date on the notification invoice. Failure to pay the required fee after an invoice has been sent is a violation, and the department may seek administrative penalties as listed in §295.331 of this title (relating to Compliance: Administrative Penalty).

§295.326. *Recordkeeping.*

(a) Record retention. Records and documents required by this section shall be retained for the time specified in subsection (b)(2) of this section for remediators and subsection (c)(2) of this section for assessors, subsection (d) of this section for mold analysis laboratories, and subsection (e)(1) of this section for training providers. Such records and documents shall be made available for inspection by the department or any law enforcement agency immediately upon request. Licensees and accredited training providers who cease to do business shall notify the department in writing 30 days prior to such event to advise how they will maintain all records during the minimum three-year retention period. The department, upon receipt of such notification and at its option, may provide instructions for how the records shall be maintained during the required retention period. A licensee or accredited person shall notify the department that it has complied with the department's instructions within 30 days of their receipt or make other arrangements approved by the department. Failure to comply may result in disciplinary action.

(b) Mold remediation companies and contractors. A licensed mold remediation company shall maintain the records listed in paragraphs (1) and (2) of this subsection for each mold remediation project performed by the company and the records listed in paragraph (4) of this subsection for each remediation worker training session provided by the company. A licensed mold remediation contractor not employed by a company shall personally maintain the records listed in paragraphs (1) and (2) of this subsection for each mold remediation project performed by the contractor and the records listed in paragraph (4) of this subsection for each remediation worker training session provided by the mold remediation contractor.

(1) A licensed mold remediation contractor shall maintain the following records and documents on-site at a project for its duration:

(A) a current copy of the mold remediation work plan and all mold remediation protocols used in the preparation of the work plan; and

(B) a listing of the names and license/registration numbers of all individuals working on the remediation project.

(2) A licensed mold remediation company shall maintain the following records and documents at a central location at its Texas office for three years following the stop date of each project that the company performs. A licensed mold remediation contractor not employed by a company shall maintain the following records and documents at a central location at his or her Texas office for three years following the stop date of each project that the contractor performs:

(A) a copy of the mold remediation work plan specified under paragraph (1)(A) of this subsection;

(B) photographs of the scene of the mold remediation taken before and after the remediation;

(C) the written contract between the mold remediation company or remediation contractor and the client, and any written contracts related to the mold remediation project between the company or contractor and any other party;

(D) all invoices issued regarding the mold remediation; and

(E) copies of all certificates of mold remediation issued by the company or contractor.

(3) A remediation contractor or company may maintain the records required under paragraphs (1) and (2) of this subsection in an electronic format rather than as paper documents. A remediation contractor or company who maintains the required records in an electronic format must provide paper copies of records to a department inspector during an inspection if requested to do so by the inspector.

(4) A licensed mold remediation contractor or remediation company who trains employees to meet the requirements under §295.320(d) of this title (relating to Training: Required Mold Training Courses) shall maintain copies of the required training documents at a central location at its Texas office.

(c) Mold assessment companies and consultants.

(1) A licensed mold assessment company shall maintain the following records and documents at a central location at its Texas office for the time period required under paragraph (2) of this subsection for each project that the company performs. A licensed mold assessment consultant not employed by a company shall maintain the following records and documents at a central location at his or her Texas office for the time period required under paragraph (2) of this subsection for each project that the contractor performs:

(A) the name and mold credential number of each of its employees who worked on the project and a description of each employee's involvement with the project;

(B) the written contract between the mold assessment company or consultant and the client;

(C) all invoices issued regarding the mold assessment;

(D) copies of all laboratory reports and sample analyses;

(E) copies of all photographs required under §295.324 of this title (relating to Post-Remediation Assessment and Clearance);

(F) copies of all mold remediation protocols and changes prepared as a result of mold assessment activities; and

(G) copies of all passed clearance reports issued by the company or consultant.

(2) For each project, a licensed mold assessment company or consultant shall maintain all the records listed in paragraph (1) of this subsection until:

(A) the company or consultant issues a mold assessment report, management plan, or remediation protocol to a client, if the company or consultant performs only the initial assessment for the project;

(B) the company or consultant issues the final status report to the client, if a final status report is issued; or

(C) the company or consultant provides the signed Certificate of Mold Damage Remediation to a mold remediation contractor or company, if a Certificate of Mold Damage Remediation is provided.

(d) Mold analysis laboratories. A licensed mold analysis laboratory shall maintain copies of the results, including the sample identification number, of all analyses performed as part of a mold assessment or mold remediation for three years from the date of the sample analysis.

(e) Training providers. Accredited training providers shall comply with the following record-keeping requirements. The training provider shall maintain the records in a manner that allows verification of the required information by the department.

(1) Training records. The training provider shall maintain records for at least three years from the date of the class in accordance with §295.318(f)(8) and (9) of this title (relating to Mold Training Provider: Accreditation).

(2) A training provider may maintain the records required under paragraph (1) of this subsection in an electronic format rather than as paper documents. A training provider who maintains the required records in an electronic format must provide paper copies of records to a department inspector during an inspection if requested to do so by the inspector.

§295.327. *Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner.*

(a) Not later than one week after completion of a mold remediation project, the licensed mold remediation contractor or company shall provide the property owner with copies of required photographs of the scene of the mold remediation taken before and after the remediation.

(b) Not later than the 10th day after the project stop date, the licensed mold remediation contractor or company shall provide a Certificate of Mold Damage Remediation to the property owner on a form adopted by the Texas Commissioner of Insurance. The Certificate of Mold Damage Remediation must include the following:

(1) a statement by a licensed mold assessment consultant (not the licensed mold remediator) that based on visual, procedural, and analytical evaluation, the mold contamination identified for the project has been remediated as outlined in the mold remediation protocol; and

(2) a statement on the certificate that the underlying cause of the mold has been remediated, if the licensed mold assessment consultant determines that the underlying cause of the mold has been remediated so that it is reasonably certain that the mold will not return from that same cause.

(c) Copies of the completed certificate shall be retained in the business files of the assessment consultant/company and the remediation contractor/company.

(d) If a property owner sells the property, the property owner shall provide to the buyer a copy of each Certificate of Mold Damage Remediation issued for the property under this section during the five years preceding the date the property owner sells the property.

§295.338. *Civil Liability Exemption for Certain Property Owners or Governmental Entities.*

(a) A property owner is not liable for damages related to mold remediation on a property if a Certificate of Mold Damage Remediation has been issued under §295.327 of this title (relating to Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner) for that property and the damages accrued on or before the date of the issuance of the Certificate of Mold Damage Remediation.

(b) A person is not liable in a civil lawsuit for damages related to a decision to allow occupancy of a property after mold remediation has been performed on the property if a Certificate of Mold Damage Remediation has been issued under §295.327 of this title for the property, the property is owned or occupied by a governmental entity, including a school, and the decision was made by the owner, the occupier, or any person authorized by the owner or occupier to make the decision.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy Campbell

General Counsel

Department of State Health Services

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

The Texas Parks and Wildlife Department (the department) adopts the repeal of §§51.161 - 51.163, 51.165, and 51.166, and new §§51.161 - 51.167, regarding nonprofit organizations. Sections 51.163 and 51.167 are adopted with changes to the proposed text as published in the March 2, 2007, issue of the *Texas Register* (32 TexReg 1021). Sections 51.161, 51.162, and 51.164 - 51.166 are adopted without changes and will not be republished.

The adopted change to §51.163 adds the word "written" to subsection (a)(5) to clarify that the use of department facilities by a nonprofit partner should be pursuant to a written agreement. The adopted change to §51.163 adds a requirement in subsection (b)(7) that, if a department property, facility, or program has more than one closely related nonprofit partner, all such closely related nonprofit partners associated with the property, facility, or program should be notified of meetings of the closely related nonprofit partner and allowed to send a representative to the meetings. The adopted change to §51.167 adds a new subsection (c) to provide that if, a closely related nonprofit partner is required to adopt a policy or procedure, the department may develop a model policy or procedure. As a result of this change, proposed subsection §51.167(c) is now designated as subsection (d) and proposed subsection (d) is now subsection (e).

The adopted repeals and new sections are necessary to implement the requirements of Parks and Wildlife Code, Chap-

ter 11, Subchapter J, §§11.201 - 11.207 and Government Code, §2255.001(a).

The Parks and Wildlife Code authorizes the department to work with nonprofit organizations to carry out the mission of the department. Parks and Wildlife Code, §11.202, requires the Parks and Wildlife Commission (the commission) to adopt rules to "establish the best practices for nonprofit partners." Parks and Wildlife Code, §11.203, requires the commission to adopt rules regarding "state standards and safeguards for accounting for state assets held by the nonprofit partner." Parks and Wildlife Code, §11.205, authorizes the commission to designate an official nonprofit partner dedicated to meeting department goals. Parks and Wildlife Code, §11.205(f), requires the commission to establish by rule guidelines for the official nonprofit partner's solicitation and acceptance of sponsorships and the best practices of the official nonprofit partner.

Similarly, Government Code, Chapter 2255, requires a state agency to adopt rules regarding the relationship between donors and the agency, including the agency's employees if the agency is authorized to accept donations or if "a private organization exists that is designed to further the purposes and duties of the agency." Tex. Gov't Code, §2255.001(a).

Nonprofit partners serve an important function for the department. These organizations provide valuable financial and in-kind support to the department. In addition, these organizations provide assistance to the department in carrying out the department's mission.

The adopted rules categorize each of the department's nonprofit partners as a general nonprofit partner (GNP), a closely related nonprofit partner (CRNP), or the official nonprofit partner (ONP). A general nonprofit partner is a nonprofit partner that is not a closely-related nonprofit partner or the official nonprofit partner and has an agreement of any kind with the department, has a representative serving on a department or commission advisory committee, or otherwise has a relationship with the department. A closely related nonprofit partner is a nonprofit partner whose primary purpose is to benefit a specific department property, facility, or program. Closely related nonprofit partners include "friends groups" (e.g., Friends of Cedar Hill, Friends of San Angelo State Park). The official nonprofit partner is the entity designated as the official nonprofit partner of the department by the commission in accordance with Texas Parks and Wildlife Code, §11.205. In 2001, the commission designated the Texas Parks and Wildlife Foundation as the department's official nonprofit partner.

The department desires to maintain a comprehensive list of all nonprofit organizations with which the department has a relationship. Because the ONP and CRNPs enjoy a closer relationship with the department, the rules impose additional and more stringent requirements on those organizations. The intent of the rules is to impose very basic requirements on GNPs. The term "nonprofit partner" refers collectively to GNPs, CRNPs, and the ONP.

To ensure clarity, adopted new §51.161, concerning Definitions, defines terms used in the rule, including closely related nonprofit partner, commission, department, donor, director, general nonprofit partner, gift, improvement, IRS 990, in-kind donation, local sponsorship, nonprofit entity, nonprofit partner, official nonprofit partner, program, regional director, sponsor, sponsorship, and statewide sponsorship.

Adopted new §51.162, concerning Criteria and General Requirements, sets out the general criteria for all nonprofit partners,

including designation by the commission and receipt of a nonprofit determination letter from the U.S. Internal Revenue Service (IRS) within 180 days after being designated by the commission as a nonprofit partner. In addition, this section requires that a nonprofit partner's activities for the department be consistent with the department's mission and goals. This section also addresses the disposition of funds raised for the benefit of the department. These requirements are intended to ensure that all nonprofit partners meet the basic requirements of a nonprofit corporation and are properly designated by the commission.

In addition, adopted new §51.162 provides that the ONP and each CRNP must enter an agreement with the department within 60 days of being designated as a CRNP or an ONP, must be incorporated in accordance with the Texas Nonprofit Corporation Act (Business Organizations Code, Chapter 22), and must notify the department of any change in tax status. Incorporation in accordance with Texas law is desired to ensure that CRNPs and the ONP comply with Texas law regarding nonprofit corporations, given the close relationship that CRNPs and the ONP have with the department.

The adopted new rules describe four types of best practices: general best practices (§51.163); best practices regarding officers and directors (§51.164); best practices regarding fundraising (§51.165); and best practices regarding sponsorships (§51.166).

Adopted new §51.163, concerning Best Practices (General), describes the general best practices applicable to NPs. Subsection (a) applies to all nonprofit partners. Subsection (b) applies only to CRNPs and the ONP. Subsection (c) applies only to the ONP.

The general best practices applicable to all nonprofit partners in adopted new §51.163(a) prohibit an NP from holding or obligating department funds; prohibit an NP from using department intellectual property without the department's written agreement; prohibit an NP from using department facilities or services without the department's written approval; and require an NP to comply with applicable law and department guidelines, including anti-discrimination laws. These requirements are intended to ensure that the department's property and funds are protected and that nonprofit organizations with which the department is associated comply with all applicable laws.

CRNPs and the ONP must comply with additional general best practices listed in adopted new §51.163(b). Each CRNP and the ONP must file with the department and make available to the public an annual IRS 990 (Return of Organization Exempt from Tax), regardless of whether the nonprofit is required to file a return with the Internal Revenue Service; conduct business in a manner to ensure transparency which is defined to mean that business practices and internal processes are conducted in a way that is open, clear, measurable, and verifiable; file an annual report and organizational documents (bylaws, articles of incorporation, financial statements) with the department and make those documents available to the public; and notify the department and associated CRNPs of each meeting and allow a department representative and a representative of an associated CRNP to attend. This section also prohibits CRNPs or the ONP from lobbying, as defined in Government Code, Chapter 305, or supporting a political candidate. Under this section, the ONP must also have an annual audit and maintain adequate officers and directors liability insurance. Because the ONP and CRNPs are closely associated with the department and often engage in activities on behalf of or intended to solely benefit the department, it is important that the activities and practices of the ONP

and CRNPs are conducted in a manner that enables the organization to withstand public scrutiny.

Adopted new §51.164, concerning Best Practices (Officers and Directors), describes the best practices related to officers and directors. Subsection (a) applies to all nonprofit partners; subsection (b) applies only to CRNPs and the ONP; and subsection (c) applies only to the ONP.

Under adopted new §51.164(a), all nonprofit partner officers and directors must be provided a copy of the department's Land and Water Resources Conservation and Recreation Plan (the Plan) or a link to the Plan on the department's web site. This requirement is also contained in Parks and Wildlife Code, §11.204.

Adopted new §51.164(b) requires that each CRNP and the ONP have a conflict of interest policy; pay only reasonable compensation to executives and managers; hold regular board meetings; and provide organizational and related documents to new board members and directors. In addition, each CRNP and the ONP must prohibit a department employee or commissioner from being an officer or director (except in a non-voting capacity). These requirements are intended to ensure that a proper relationship is established between the department and the nonprofit partner and that the nonprofit partner's officers and directors are appropriately informed regarding the organization's roles and activities.

Adopted new §51.165, concerning Best Practices (Fundraising), describes the best practices related to fundraising. Subsection (a) applies to all nonprofit partners. Subsection (b) applies only to CRNPs. Subsection (c) applies to CRNPs and the ONP.

Adopted new §51.165(a) allows all nonprofit partners to conduct fundraising and undertake programs to benefit the department as agreed in writing by the department, but prohibits an NP from obligating the department unless agreed in writing in advance by the department. This section requires that all nonprofit partners have financial procedures governing the handling of funds raised for the benefit of the department and engage in reasonable and prudent financial management practices. In addition, this section requires that funds raised and projects undertaken by a CRNP benefit the facility, property, or program with which the CRNP is associated or must further the CRNP's mission related to the facility, property, or program. These fundraising restrictions are not intended to limit the ability of a nonprofit partner to make an unrestricted donation to the department. The new section also allows NPs, CRNPs, and the ONP to work together towards a common goal for the benefit of the department. As a state agency, the department must comply with restrictions on the use of the state's resources and name. In addition, the ONP and CRNPs often use a name similar to that of the department or a department facility. To ensure confidence on the part of persons or entities that donate funds in support of a department program, event, facility, or property, it is important that donated funds are used as the donor intended. Similarly, it is important that representations made to donors regarding department programs, events, and properties are accurate and consistent with department plans. As a result, this section is intended to ensure coordination of fundraising between the department and CRNPs and the ONP.

Adopted new §51.166, concerning Best Practices (Sponsorship), describes the best practices related to sponsorships. Subsection (a) applies to all nonprofit partners. Subsection (b) applies only to CRNPs and the ONP.

Under adopted new §51.166, any nonprofit partner must have prior written approval from the department to sponsor a department program. The department will only provide the level of sponsorship recognition approved in advance by the department. Under the new section, statewide sponsorships would require the approval of the director; and local sponsorships would require the approval of the appropriate regional director. In addition, the new section places other limits on sponsorship, including prohibiting the acceptance of a sponsorship from certain persons or entities where a conflict of interest may result, including sponsorship by a person or entity holding a commercial license issued by the department. Parks and Wildlife Code, §11.026, prohibits the department from accepting donations from commercial licensees.

Adopted new §51.166 also prohibits sponsorship signage on vehicles that were purchased or are maintained with department funds, limits sponsorship recognition to the programs for which sponsorship support has been provided, and prohibits a department employee from acting as an agent for a nonprofit partner in negotiating a sponsorship package with the department. The new section also limits the level of sponsorship recognition that the department will provide to ensure that such recognition does not overshadow the department and is appropriate when considering the level of sponsor support. The department appreciates the valuable support provided by persons or entities sponsoring department events and programs. However, the Texas Constitution prohibits a state agency from making a "grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever," except in cases of public calamity. Tex. Const., art. III, §51. In addition, state resources are to be used for state purposes. Tex. Gov't Code, §2203.004. An incidental private benefit is permissible if the primary purpose is a public purpose. *Graves v. Morales* 923 S.W.2d 754 (Tex. App. - Austin 1996, writ denied). As a result, the department must be vigilant in ensuring that the department program or event is not overshadowed by recognition of a corporate or other sponsor.

Adopted new §51.167, concerning Department Procedures, sets out general department procedures including the periodic designation of NPs and a prohibition on the department obligating NP funds or property. The adopted new section also allows the ONP to reimburse department employees for legitimate travel expenses, allows the ONP to award department scholarships, and requires commission approval of all donations of \$500 or more. In addition, §51.167 provides that, if a policy or procedure is required by the new subchapter, the department will develop model policies and procedures that can be adopted by NPs. These provisions are intended to clarify the department's actions regarding NPs and the department's relationship with nonprofit partners.

The adopted new rules will function by establishing the general requirements and best practices for nonprofit entities that are considered nonprofit partners of the department.

The department received comments from two commenters. One commenter supported the rule but did not provide an explanation. The other commenter expressed support and made several suggestions.

A commenter suggested that §51.163(a)(5) be clarified to provide that an agreement to allow a nonprofit partner to use of a department facility must be in writing. The department agrees with this comment and has changed this section as adopted to reflect this comment.

A commenter suggested that §51.163(b)(7) be clarified to require that, if more than one CRNP is associated with a department site or project, that all CRNPs be notified of an associated CRNP meeting and allow a representative from each associated CRNP to attend. The department agrees with this comment and has made the recommended change.

A commenter suggested that the department develop model policies and procedures that could be adopted by nonprofit partners to satisfy the new rules' requirements regarding adoption of policies and procedures. The department agrees with this comment and added a subsection to §51.167 providing that the department may develop model policies and procedures.

SUBCHAPTER G. NONPROFIT ORGANIZATIONS

§§51.161 - 51.163, 51.165, 51.166

The repeals are adopted under the authority of Parks and Wildlife Code, §§11.202, 11.203, and 11.205, and Government Code, §2255.001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



31 TAC §§51.161 - 51.167

The new rules are adopted under the authority of Parks and Wildlife Code, §§11.202, 11.203, 11.205, and Government Code, §2255.001.

§51.163. *Best Practices (General).*

(a) All NPs must comply with the general best practices prescribed in this subsection.

(1) NPs shall not hold or obligate department funds.

(2) NPs shall comply with all applicable rules, regulations, and laws, including all applicable laws regarding discrimination based on race, color, national origin, sex, age, and disability.

(3) NPs shall not use or authorize the use of department intellectual property, including trademarks, logos, name, or seal, without the express written agreement of the department.

(4) NPs shall not employ a department employee in a paid position or otherwise provide compensation or a direct personal benefit to a department employee. Provided, however, unless otherwise prohibited by law, benefits authorized by Penal Code, Chapter 36, are not prohibited by this subsection.

(5) NPs may use equipment, facilities, or services of employees of the department only in accordance with a written agreement that provides for the payment of adequate compensation and/or identifies the benefit to the department for such use. Notwithstanding this

subsection, a NP may use department facilities to the same extent and for the same fee as members of the public.

(b) In addition to subsection (a) of this section, CRNPs and the ONP must comply with the general best practices prescribed in this subsection.

(1) CRNPs and the ONP shall conduct business in a way that will ensure public access and transparency. As used in this subsection, "transparency" shall mean that the CRNP's and ONP's business practices and internal processes are conducted in a way that is open, clear, measurable, and verifiable.

(2) CRNPs and the ONP shall file with the department and make available to the public an annual report that includes a list of the primary activities undertaken during the previous year, a summary of significant achievements and challenges over the previous year, and other information requested by the department.

(3) Regardless of whether a CRNP or the ONP is required to file an IRS 990 with the Internal Revenue Service, each CRNP and the ONP must complete and file an IRS 990 with the department each year, regardless of income, and must make the IRS 990 available to the general public, upon request.

(4) CRNPs and the ONP shall file with the department its articles of incorporation, by-laws, and most recent financial statements, and any updates to these documents and shall make these documents available to the public, upon request.

(5) CRNPs and the ONP shall not engage in activities that would require it or a person acting on its behalf to register as a lobbyist under Texas law, Texas Government Code, Chapter 305. However, this subsection is not intended to restrict CRNPs and the ONP from providing information to the legislature or to other elected or appointed officials.

(6) CRNPs and the ONP shall not donate funds to a political campaign or endorse a political candidate.

(7) CRNPs and the ONP shall notify the department of all meetings and allow a department representative to attend all meetings, including, but not limited to, meetings of its general membership, managing board, and committees. Meeting notices must be provided to the department sufficiently in advance of the meeting so that the department representative has ample opportunity to attend. Such notice may be provided by letter, email, or telephone. A CRNP should also notify other CRNPs associated with the property, facility, or program of all meetings and allow a representative to attend.

(c) In addition to subsections (a) and (b) of this section, the ONP must comply with the general best practices prescribed in this subsection.

(1) The ONP must have an annual audit by an independent accounting firm and shall make the results of that audit available to the department.

(2) The ONP must maintain an adequate directors and officers liability insurance policy.

§51.167. *Department Procedures.*

(a) The department will maintain and periodically update a list of GNPs and a separate list of CRNPs. This list will be made available to the public.

(b) The department will not hold or obligate NP funds or property.

(c) The ONP may reimburse department employees for legitimate, documented expenses. Additionally, the ONP may award schol-

arships to department employees from private, donor-directed sources, so long as there is a benefit to the department.

(d) The department may develop model policies and procedures for adoption by CRNPs or other NPs. Where a CRNP or the ONP is required by these rules to adopt a policy or procedure, adoption of the model policy or procedure shall be deemed to comply with that requirement.

(e) All donations to the department of \$500 or more must be approved by commission, voting in public session.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ann Bright

General Counsel

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CHAPTER 53. FINANCE

The Texas Parks and Wildlife Commission adopts amendments to §§53.2, 53.5, 53.6, 53.12, and 53.13, concerning License Fees and Boat and Motor Fees; and §53.60, concerning Stamps. Sections 53.2, 53.6, 53.12, and 53.60 are adopted with changes to the proposed text as published in the February 23, 2007, issue of the *Texas Register* (32 TexReg 728). Section 53.5 and §53.13 are adopted without changes and will not be republished.

The change to §53.2, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules, removes the phrase "if applicable" from subsection (b)(2) and replaces it with the phrase "unless exempt," which is more accurate.

The change to §53.6, concerning Recreational Fishing Licenses, Stamps and Tags, adds language to subsection (a)(2) to clarify that a red drum tag is available at no charge to persons who purchase a special resident fishing license.

The change to §53.12, Commercial Fishing Licenses and Tags, eliminates subsection (b)(2)(B) to eliminate the reference to the nonresident commercial fishing boat license transfer and fee. The rulemaking combined the resident and nonresident commercial fishing boat licenses. Because there is no longer a nonresident license, there is no need for a nonresident transfer.

The change to §65.60, concerning Stamps alters subsection (e)(3) to replace "special license" with "youth license." The amendment to §53.5, concerning Recreational Hunting Licenses, Stamps, and Tags, eliminated the special license and replaced it with a license limited to persons under the age of 17. The change is necessary to reflect the new terminology.

The amendments as adopted are part of an overall department initiative to reduce the number of types of licenses sold by the department. By combining or replacing certain licenses and license packages and eliminating others that are not popular, the department will reduce administrative costs and regulatory complexity while still offering a sufficient variety of licenses to meet the various types of recreational demand.

The amendment to §53.2, concerning License Issuance Procedures, Fees, Possession and Exemption Rules, adds new paragraph (4) to subsection (a) to stipulate that persons under the age of 17 are considered to be residents for the purposes of the chapter. Under Parks and Wildlife Code, §42.001, the commission is authorized to designate categories of individual as residents. The amendment to subsection (b)(2) alters the license possession requirements to acknowledge that due to the implementation of the one-day fishing package the stamp requirement is no longer universal.

The amendment to §53.5, concerning Recreational Hunting Licenses, Stamps, and Tags, renames the Special Resident Hunting License the Senior Resident Hunting License, restricts its use to residents who are 65 years of age or older, and creates an additional license that is limited to persons under the age of 17. Under current rule, the Special Resident Hunting License is available to residents over the age of 65 and any person under 17 years of age, regardless of residency status. The department wishes to be able to more accurately track demographic trends in purchasing and use, which makes it necessary to stratify the two age groups currently eligible to purchase the special resident license. The price of the licenses remains unchanged.

The amendment to §53.6, concerning Recreational Fishing Licenses, Stamps, and Tags, allows persons who are legally blind to purchase the Special Resident Fishing License. The amendment also creates the Senior Resident Fishing License for residents who are 65 years of age or older; creates a Resident One-Day All-Water Fishing License (\$10 fee), a Nonresident One-Day All-Water Fishing License (\$15 fee), renames the special license packages as senior license packages, and implements a fee of \$3 for the Bonus Red Drum Tag.

Under Parks and Wildlife Code, §46.004, the commission may establish a lower fee or waive the fee or license requirement for a resident who is blind as defined by Human Resources Code, §94.001. The department has always allowed legally blind persons to purchase a fishing license at a reduced cost; however, this has never been explicitly stated by rule. The amendment accomplishes that. The One-Day All-Water license is intended to replace a variety of licenses. To that end, the amendment to subsection (c) also eliminates the following licenses: July and August Resident Fishing, Day Resident Fishing, and Day Nonresident Fishing; and the following license packages: July and August Resident Fishing (freshwater, saltwater, all water), the resident and nonresident "Day Plus" Fishing (freshwater, saltwater, all water). The implementation of a fee for the bonus red drum tag is necessary for the department to recoup the administrative cost of providing anglers with the opportunity to take a red drum in addition to the red drum allowed under a fishing license. The amendment also eliminates obsolete references to effective dates and makes additional nonsubstantive changes to simplify and clarify the regulations.

The amendment to §53.12, concerning Commercial Fishing Licenses and Tags, eliminates both the Resident and Nonresident Commercial Fishing Boat License and creates a single license for residents and nonresidents alike, called the Commercial Fishing Boat License. The new license is required for any boat (resident or nonresident) used in taking aquatic products (except menhaden, oysters, crabs, and shrimp) from state waters or unloading aquatic products in Texas taken from outside state waters for commercial purposes. By combining the two licenses, the department will reduce administrative costs by issuing one license instead of two. The fee for the license is \$25.

The amendment also eliminates obsolete references to effective dates and makes additional nonsubstantive changes to simplify and clarify the regulations.

The amendment to §53.13, concerning Business Licenses and Permits (Fishing) renames the Resident Freshwater Fishing Guide license as the Freshwater Fishing Guide license, renames the Resident Saltwater Fishing Guide license as the Resident All-Water Fishing Guide license, and renames the Nonresident Saltwater Fishing Guide license as the Nonresident All-Water Fishing Guide license. The amendment is nonsubstantive. The amendment also eliminates obsolete references to effective dates and makes additional nonsubstantive changes to simplify and clarify the regulations.

The amendment to §53.60, concerning Stamps, creates an exemption from the stamp requirements for purchasers of the Special Fishing License, Resident One-Day All-Water Fishing License, and the Nonresident One-Day All-Water Fishing License.

The rules will function to combine or replace licenses and license packages, eliminate others that are not popular, reduce the number and type of licenses, and by making the system simpler for license purchasers, and providing better utilization and harvest data from various user groups.

The department received two comments opposing adoption of the rules as proposed. Of those commenters, one offered a specific rationale for opposition. The comment, accompanied by the agency's response, follow.

One commenter opposed adoption of the portion of the proposed rules that implemented a \$3 fee for a bonus red drum tag and stated that the majority of fishermen rarely ever need the bonus tag, that the fee is just another attempt at getting into the pockets of the sportsman, and that the department should do away with stamps and tags and just raise the price of the license to reflect all the fees. The department disagrees with the comment and responds that enough fishermen use the bonus tag that the department is not recouping the administrative cost of providing it free of charge, so rather than eliminating it the department chose to charge a fee for it. The department also disagrees and responds that the fee is intended to recoup the administrative costs of making the bonus red drum tag available to those who wish to take an additional oversized red drum. The department believes that anglers should have the option of purchasing a comprehensive fishing license package that includes all stamps and created the combination license for that purpose. No changes were made as a result of the comment.

The department received four comments supporting adoption of the proposed amendments.

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §§53.2, 53.5, 53.6, 53.12, 53.13

The amendments are adopted under the authority of Parks and Wildlife Code, §42.012, which authorizes the commission to establish a lower hunting license fee or waive the fee or license requirement for a resident who is under 17 years old; §43.402, which authorizes the commission to exempt persons from the saltwater fishing stamp requirements; §43.802, which authorizes the commission to exempt persons from the freshwater fishing stamp requirements; §46.004, which authorizes the commission to establish fees for resident and non-resident fishing licenses

and to establish a lower fee or waive the fee or license requirement for a resident who is blind as defined by Human Resources Code, §94.001; §46.0045, which authorizes the commission to establish fees for initial and duplicate tags; §46.005, which authorizes the commission to establish fees for temporary sport-fishing licenses of all types; and §47.007, which authorizes the commission to establish a fee for a commercial fishing boat license.

§53.2. License Issuance Procedures, Fees, Possession, and Exemption Rules.

(a) Hunting license possession.

(1) No person may hunt turkey in this state without having a valid hunting license in immediate possession.

(2) A person may hunt species other than turkey in this state without having a valid hunting license in immediate possession if that person has acquired a license electronically (including by telephone) and has a valid confirmation number in his possession. Confirmation numbers shall only be valid for 20 days from date of purchase.

(3) A person may hunt deer in this state without having a valid hunting license in immediate possession only if that person:

(A) has acquired a license electronically (including by telephone) and has a valid confirmation number in his possession; and

(B) is lawfully hunting:

(i) under the provisions of §65.26 of this title (relating to Managed Lands Deer (MLD) Permits);

(ii) under the provisions of §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(iii) by special permit under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation);

(iv) on department-leased lands under the provisions of Parks and Wildlife Code, §11.0272; or

(v) by special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.

(4) For the purposes of this chapter, any person under the age of 17 is a resident.

(b) Fishing license possession.

(1) A person may fish in this state without having a valid fishing license in immediate possession if that person:

(A) is exempt from holding a fishing license; or

(B) has acquired a license electronically (including by telephone) and has a valid confirmation number in possession. Confirmation numbers shall only be valid for 20 days from date of purchase.

(2) No person may catch and retain a red drum over 28 inches in length in the coastal waters of this state without having a valid fishing license, saltwater sportfishing stamp (unless exempt), and red drum tag in immediate possession.

(c) Issuance of licenses and stamps electronically (including by telephone).

(1) A person may acquire recreational hunting and/or fishing licenses electronically (including by telephone) from the department or its designated representatives by agreeing to pay a convenience fee of up to \$5 per license in addition to the normal license fee.

(2) A person may acquire recreational hunting and/or fishing stamps electronically (including by telephone) from the department or its designated representatives by agreeing to pay a convenience fee of up to \$5 per stamp order in addition to the normal stamp fee(s). This fee shall not be charged if a license is acquired during the same transaction.

(d) The following categories of persons are exempt from fishing license requirements and fees:

- (1) residents under 17 years of age;
- (2) non-residents under 17 years of age;
- (3) non-residents 65 years of age or older who are residents of Louisiana and who possess a Louisiana recreational fishing license;
- (4) non-residents 64 years of age or older who are residents of Oklahoma;

(5) persons who hold valid Louisiana non-resident fishing licenses while fishing on all waters inland from a line across Sabine Pass between Texas Point and Louisiana Point that form a common boundary between Texas and Louisiana if the State of Louisiana allows a reciprocal privilege to persons who hold valid Texas annual or temporary non-resident fishing licenses; and

(6) residents of Louisiana who meet the licensing requirements of their state while fishing on all waters inland from a line across Sabine Pass between Texas Point and Louisiana Point that form a common boundary between Texas and Louisiana if the State of Louisiana allows a reciprocal privilege to Texas residents who hold valid Texas fishing licenses.

(e) An administrative fee of \$3 shall be charged for replacement of lost or destroyed licenses, stamps, or permits. This fee shall not be charged for items which have a fee for duplicates otherwise prescribed by rule or statute.

§53.6. Recreational Fishing Licenses, Stamps, and Tags.

(a) The items listed in this subsection are sold only as part of a package. The price and terms of these items are as follows:

- (1) resident fishing license--\$23;
- (2) special resident fishing license (valid for residents who are legally blind as described in Parks and Wildlife Code, §46.004)--\$6 (one red drum tag shall be available at no additional charge with the purchase of a special resident fishing license);
- (3) senior resident fishing license (valid for residents who are 65 years of age or older on the date of license purchase)--\$6;
- (4) "year-from-purchase" resident fishing license--\$30. The "Year-from-purchase" resident fishing license is valid from the date of purchase through the end of the purchase month of the subsequent year; and
- (5) non-resident fishing license--\$50.

(b) The items listed in this subsection may be sold individually or as part of a package. Stamps sold individually shall be valid from the date of purchase or the start date of the license year, whichever is later, through the last day of the license year. Stamps sold as part of a fishing package shall be valid for the same time period as the license included in the package as specified in this rule. The price of these stamps is as follows:

- (1) freshwater fishing stamp--\$5; and
- (2) saltwater sportfishing stamp--\$7 plus a saltwater sport fishing stamp surcharge of \$3. A red drum tag shall be issued at no additional charge with each saltwater sportfishing stamp.

(c) Fishing packages and licenses. The price of any fishing package shall be the sum of the price of the individual items included in the package.

(1) resident freshwater fishing package--\$28. Package consists of a resident fishing license and a freshwater fish stamp;

(2) resident saltwater fishing package--\$33. Package consists of a resident fishing license and a saltwater sportfishing stamp with a red drum tag;

(3) resident "all water" fishing package--\$38. Package consists of a resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag;

(4) senior resident freshwater fishing package--\$11. Package consists of a senior resident fishing license and a freshwater fishing stamp;

(5) senior resident saltwater fishing package--\$16. Package consists of a senior resident fishing license and a saltwater sportfishing stamp with a red drum tag;

(6) senior resident "all water" fishing package--\$21. Package consists of a senior resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag;

(7) "year-from-purchase" resident "all water" fishing package--\$45. Package consists of a "year-from-purchase" resident fishing license, a freshwater stamp, and a saltwater sportfishing stamp with a red drum tag;

(8) resident one-day all-water fishing license--\$10. One red drum tag shall be available at no additional charge with the purchase of the first one-day license only.

(9) non-resident freshwater fishing package--\$55. Package consists of a non-resident fishing license and a freshwater fish stamp.

(10) non-resident saltwater fishing package--\$60. Package consists of a non-resident fishing license and a saltwater sportfishing stamp with a red drum tag.

(11) non-resident "all water" fishing package--\$65. Package consists of a non-resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag.

(12) non-resident one-day all-water fishing license--\$15. One red drum tag shall be available at no additional charge with the purchase of the first one-day license only.

(13) Lake Texoma fishing license--\$12. Holders of a valid Lake Texoma License are exempt from freshwater fishing stamp requirements solely for the purpose of fishing on Lake Texoma; and

(14) replacement fishing package or license--\$10.

(d) Fishing tags:

(1) exempt angler red drum tag--\$3. Provides a red drum tag for persons that are exempt from the purchase of a resident or non-resident fishing license of any type or duration;

(2) bonus red drum tag provides a second red drum tag to persons that have previously received a red drum tag)--\$3;

(3) individual bait-shrimp trawl tag--\$35; and

(4) saltwater trotline tag--\$4.

§53.12. Commercial Fishing Licenses and Tags.

(a) Shrimping licenses:

(1) Licenses:

- (A) resident commercial gulf shrimp boat--\$450;
- (B) resident commercial bay shrimp boat--\$348;
- (C) resident commercial bait-shrimp boat--\$348;
- (D) resident commercial shrimp boat captain's--\$30;
- (E) nonresident commercial gulf shrimp boat--\$1,350;
- (F) nonresident commercial bay shrimp boat--\$750;
- (G) nonresident commercial bait-shrimp boat--\$750;

and

(H) nonresident commercial shrimp boat captain's--\$120.

(2) Shrimping license surcharge for shrimp marketing account:

- (A) resident commercial gulf shrimp boat--\$45;
- (B) resident commercial bay shrimp boat--\$34.80;
- (C) nonresident commercial gulf shrimp boat--\$135;

and

(D) nonresident commercial bay shrimp boat--\$75.

(3) License transfers:

(A) Transfers between living persons.

(i) resident commercial gulf shrimp boat license transfer--\$25;

(ii) resident commercial bay shrimp boat license transfer--\$348;

(iii) resident commercial bait-shrimp boat license transfer--\$348;

(iv) nonresident commercial gulf shrimp boat license transfer--\$25;

(v) nonresident commercial bay shrimp boat license transfer--\$750; and

(vi) nonresident commercial bait-shrimp boat license transfer--\$750.

(B) Transfers to heirs (as defined in Parks and Wildlife Code, §77.113).

(i) resident commercial bay shrimp boat--\$10;

(ii) resident commercial bait shrimp boat--\$10;

(iii) nonresident commercial bay shrimp boat--\$10;

and

(iv) nonresident commercial bait shrimp boat--\$10;

(4) Replacement display licenses.

- (A) resident commercial gulf shrimp boat--\$25;
- (B) resident commercial bay shrimp boat--\$25;
- (C) resident commercial bait-shrimp boat--\$25;
- (D) nonresident commercial gulf shrimp boat--\$25;
- (E) nonresident commercial bay shrimp boat--\$25; and
- (F) nonresident commercial bait-shrimp boat--\$25.

(b) Oystering licenses.

(1) Licenses:

(A) resident commercial oyster boat--\$420;

(B) resident sport oyster boat--\$12;

(C) resident commercial oyster boat captain's--\$30;

(D) resident commercial oyster fisherman's--\$120;

(E) nonresident commercial oyster boat--\$1,680;

(F) nonresident sport oyster boat--\$48;

(G) nonresident commercial oyster boat captain's--\$120; and

(H) nonresident commercial oyster fisherman's--\$300.

(2) License transfers:

(A) resident commercial oyster boat transfer--\$25; and

(B) nonresident commercial oyster boat transfer--\$25.

(3) Replacement display licenses:

(A) resident commercial oyster boat--\$25; and

(B) nonresident commercial oyster boat--\$25.

(c) General, finfish, menhaden, mussel, clam, and miscellaneous licenses.

(1) Licenses and permits.

(A) commercial fishing boat (required for any boat used in taking aquatic products (except menhaden, oysters, crabs and shrimp) from state waters or unloading aquatic products in Texas taken from outside state waters for commercial purposes)--\$25;

(B) class A menhaden boat--\$4,200;

(C) class B menhaden boat--\$50;

(D) resident general commercial fisherman's--\$24;

(E) resident commercial mussel and clam fisherman's--\$36;

(F) resident shell buyer's--\$120;

(G) nonresident general commercial fisherman's--\$180;

(H) nonresident commercial mussel and clam fisherman's--\$960;

(I) nonresident shell buyer's--\$1,800;

(J) menhaden fish plant permit--\$180;

(K) mussel dredge fee--\$36; and

(L) permit to sell non-game fish--\$60.

(2) License transfers. Resident commercial fishing boat license transfer--\$10.

(3) Replacement display licenses.

(A) resident commercial fishing boat--\$10; and

(B) nonresident commercial fishing boat--\$10.

(d) Crab licenses.

(1) Licenses and permits.

(A) resident commercial crab fisherman's--\$600; and

(B) nonresident commercial crab fisherman's--\$2,400.

(2) License transfers.

- (A) Transfers between living persons.
 - (i) resident commercial crab fisherman's--\$600; and
 - (ii) nonresident commercial crab fisherman's--\$2,400.
- (B) Transfers to heirs (as defined by Parks and Wildlife Code, §78.109).
 - (i) resident commercial crab fisherman's--\$10; and
 - (ii) nonresident commercial crab fisherman's--\$10.
- (3) Duplicate display licenses.
 - (A) resident commercial crab fisherman's--\$25; and
 - (B) nonresident commercial crab fisherman's--\$25.
- (e) Finfish licenses.
 - (1) Licenses and permits.
 - (A) resident commercial finfish fisherman's--\$360; and
 - (B) nonresident commercial finfish fisherman's--\$1,440.
 - (2) License transfers.
 - (A) Transfers between living persons.
 - (i) resident commercial finfish fisherman's--\$360; and
 - (ii) nonresident commercial finfish fisherman's--\$1,440.
 - (B) Transfers to heirs. A license may be transferred to an heir or devisee of the deceased holder of the commercial finfish license, but only if the heir or devisee is a person who in the absence of a will would be entitled to all or a portion of the deceased's property.
 - (i) resident commercial finfish fisherman's--\$10; and
 - (ii) nonresident commercial finfish fisherman's--\$10.
 - (3) Duplicate display licenses.
 - (A) resident commercial finfish fisherman's--\$25; and
 - (B) nonresident commercial finfish fisherman's--\$25.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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 Ann Bright
 General Counsel
 Texas Parks and Wildlife Department
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 For further information, please call: (512) 389-4775



SUBCHAPTER B. STAMPS

31 TAC §53.60

The amendment is adopted under the authority of Parks and Wildlife Code, §43.402, which authorizes the commission to exempt persons from the saltwater fishing stamp requirements, and §43.802, which authorizes the commission to exempt persons from the freshwater fishing stamp requirements.

§53.60. Stamps.

- (a) Stamp form. Stamp sizes and formats shall be prescribed by the executive director.
- (b) Stamp Design. An artist's original rendition will be the basic design. Stamps issued by an automated system may be an alternate design as prescribed by the executive director.
- (c) Stamp Manner of Issuance. The stamp will be issued upon payment of the prescribed fee in a manner determined by the executive director.
- (d) Stamp Purchase Identification and Possession Requirements.
 - (1) A person may hunt without a required state hunting stamp in immediate possession if the person has acquired a stamp electronically (including by telephone) and has a valid authorization number in possession. Authorization numbers shall only be valid for 20 days from purchase date.
 - (2) A person may fish without a required fishing stamp in immediate possession if the person has acquired a stamp electronically (including by telephone) and has a valid authorization number in possession. Authorization numbers shall only be valid for 20 days from purchase date.
 - (3) A state hunting or fishing stamp issued in an automated manner to a person using the stamp is valid for hunting or fishing purposes without the user's signature on its face.
- (e) Stamp Exemptions.
 - (1) The commission grants the executive director authority to exempt persons participating in any event organized for the primary purpose of promoting participation in fishing or hunting activities from the requirement to purchase or possess the following stamps:
 - (A) migratory game bird stamp;
 - (B) archery hunting stamp;
 - (C) upland game bird stamp;
 - (D) saltwater sportfishing stamp; and
 - (E) freshwater fishing stamp.
 - (2) All nonresident spring turkey hunting license holders are exempt from requirements for acquisition and possession of the upland game bird stamp.
 - (3) Youth license holders and lifetime resident hunting license holders are exempt from requirements for acquisition and possession of the following stamps:
 - (A) migratory game bird stamp;
 - (B) upland game bird stamp; and
 - (C) archery hunting stamp.
 - (4) All lifetime resident combination hunting and fishing license holders are exempt from requirements for acquisition and possession of the following stamps:
 - (A) migratory game bird stamp;
 - (B) upland game bird stamp;

- (C) archery hunting stamp;
- (D) saltwater sportfishing stamp; and
- (E) freshwater fishing stamp.

(5) All lifetime resident fishing license holders are exempt from requirements for acquisition and possession of the following stamps;

- (A) saltwater sportfishing stamp;
- (B) freshwater fishing stamp.

(6) All persons meeting the definition of a qualified disabled veteran under the provisions of Parks and Wildlife Code, §42.012(c), are exempt from the fees for the following stamps:

- (A) migratory game bird stamp;
- (B) upland game bird stamp;
- (C) archery;
- (D) saltwater fishing; and
- (E) freshwater fishing.

(7) All Texas residents on active duty in the armed forces of the United States (including members of the Reserves and National Guard on active duty) are exempt from the fees for the following stamps:

- (A) migratory game bird stamp;
- (B) upland game bird stamp;
- (C) archery;
- (D) saltwater fishing; and
- (E) freshwater fishing.

(8) Special fishing license holders are exempt from the requirements for acquisition and possession of the following stamps:

- (A) saltwater sportfishing stamp; and
- (B) freshwater fishing stamp.

(9) All one-day all-water fishing license holders are exempt from requirements for acquisition and possession of the following stamps:

- (A) saltwater sportfishing stamp; and
- (B) freshwater fishing stamp.

(f) Obsolete Stamps and Decals. An obsolete stamp is a stamp that is not valid.

(1) Obsolete stamps and decals shall be sold for informational purposes, either at an established fee for collector's edition stamp package, or at face value for individual stamps, plus a processing charge sufficient to recover shipment, postage, and sales tax.

(2) Stamps and decals shall remain on sale for a maximum of one fiscal year after expiration. During the second year, obsolete stamps and decals shall be sold only by book.

(3) Previous issues of Nongame and Endangered Species stamps may be made available for sale at \$10 for individual stamps or decals, and \$75 or less for a complete set of the 11 stamps issued from 1985 through 1995. The department may sell a limited number of collector's sets of the 11 stamps issued from 1985 through 1995, framed and mounted, for \$300 or less per set. The department may add to this price a processing charge sufficient to recover shipment, postage, and sales tax. The Department may give away earlier issues

of decals and use previously issued stamps in merchandise items that are offered for sale or as promotional items.

(g) Nongame and Endangered Species stamps issued during and after 1996 are one of seven stamps issued as collectors series set and are subject to the same rules as other obsolete stamps.

(1) The executive director may maintain a limited number of stamps and decals of each type and year.

(2) All other obsolete stamps and decals shall be destroyed.

(h) Collector's edition stamp package.

(1) A collector's edition stamp package shall consist of one each of the following stamps:

- (A) migratory game bird stamp;
- (B) upland game bird stamp;
- (C) nongame stamp;
- (D) archery stamp;
- (E) saltwater sportfishing stamp; and
- (F) freshwater fishing stamp.

(2) Stamps in the package are not valid for hunting or fishing.

(3) Fee for the package shall be \$10 wholesale price and \$20 retail price plus applicable sales tax.

(i) In addition to the freshwater fishing stamp, the department may make available a collectible freshwater habitat stamp for a fee of \$5.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.16

The Texas Parks and Wildlife Commission adopts an amendment to §53.16, concerning Vessel, Motor, and Marine Licensing Fees, without changes to the proposed text as published in the February 23, 2007, issue of the *Texas Register* (32 TexReg 730).

Under current rule, record information concerning ownership of a boat or motor is obtainable for a fee of \$2 per record. The current fee was promulgated to allow the department to recoup the administrative expenses incurred in retrieving and verifying information; however, the introduction of the department's automated Boat Registration Information and Titling System (BRITS)

has reduced the cost of accessing records to the extent that the fee is no longer necessary. Eliminating the \$2 per record fee will enable the department to more efficiently provide these records.

The adopted amendment will eliminate the current fee of \$2 to obtain a record of boat or motor ownership.

The department received one comment opposed to adoption of the proposed amendment. The commenter did not elaborate or offer a rationale for opposition. The department disagrees with the comment and responds that it is no longer necessary to impose a fee for accessing boat ownership records. No changes were made as a result of the comment.

The department received five comments supporting adoption of the proposed amendment.

The Boating Trades Association of Texas and the Gulf Coast Yacht Brokers Association commented in favor of adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, §31.039, which authorizes the commission promulgate rules to charge fee for access to ownership records and other records made or kept under Chapter 31.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 57. FISHERIES

SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

31 TAC §57.111, §57.113

The Texas Parks and Wildlife Commission adopts amendments to §57.111 and §57.113, concerning Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants. Section 57.113 is adopted with changes to the proposed text as published in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10240). Section 57.111 is adopted without changes and will not be republished.

The adopted change to §57.113 alters subsection (d) to allow any person who holds a valid exotic species permit to possess, propagate, transport, or sell the species listed in the section. As proposed, the rule would have allowed only aquaculturists to possess, propagate, transport, or sell the affected species. The department has become aware that, as proposed, the rule would prohibit grocery stores and markets from possessing, transporting, or selling tilapia and water spinach, which is not the intent of the department.

The adverse effects of intentional and accidental introductions of exotic aquatic species into natural aquatic systems have been widely studied and documented around the world. The impact of a specific exotic species on a given native ecosystem is difficult to predict; but in general terms, the threat potential can be characterized by: (1) evidence that the species is invasive elsewhere, (2) potential suitable range, (3) reproductive potential, (4) habitat quality, (5) the presence/absence of similar species, (6) the prey/predator relationship within the prospective habitat, and (7) food abundance. In addition, other factors, such as dispersal dynamics, can affect the efficacy of establishment. Once established, invasive exotic species are extremely difficult if not impossible to eliminate.

Based on empirical scientific evidence and the widely acknowledged threat that exotic species pose to native species and ecosystems, the department believes that the regulation of those fish, shellfish, and aquatic plants that pose demonstrable, potential, or unknown threats to native populations is an integral component of maintaining and protecting existing aquatic ecosystems. The species subject to restrictions by these rules have been selected because the department believes they are or could be threats to native ecosystems in Texas.

The adopted amendment to §57.111, concerning Definitions, is necessary to standardize terminology and add several families, genera, and species to the definition of harmful or potentially harmful exotic fish, shellfish, and aquatic plants in order to better protect native aquatic resources and to be consistent with United States Department of Agriculture and Texas Department of Agriculture regulations.

The adopted amendment to §57.113, concerning Exceptions, is necessary to replace terminology as necessary to be consistent with the amendments to §57.111, concerning Definitions, and to clarify the conditions under which exotic fish or shellfish may be possessed without a permit. The current rule specifies that exotic fish and shellfish may be possessed without a permit if 'the intestines have been removed.' The amendment would replace that phrase with the phrase 'gutted or beheaded.' The intent of the current rule is to prevent live exotic fish and shellfish from being released into native ecosystems. By using the term 'gutted,' the department hopes to provide a more precise description of the condition that must exist in order for the exception to apply and provides for beheading in addition to evisceration as an acceptable practice for ensuring non-viability. The amendment also would allow the sale and transport of live Parastacidae to restaurants for on-premises consumption and would allow the transport of live Parastacidae outside Texas.

The adopted amendment to §57.111, concerning Definitions, alters the definition of "fish farmer" by including the term "aquaculturist," replaces the term "fish farm" with the term "aquaculture facility" and replaces the term "fish farm complex" with the term "aquaculture complex". The amendment is necessary to clarify that the subchapter applies to persons who culture or possess harmful or potentially harmful exotic aquatic plants as well as animals. The amendment also defines the terms 'gutted' and 'beheaded' to ensure unambiguous meanings of those terms for the purposes of enforcing the provisions of the subchapter that set forth the conditions under which exotic fish may be possessed or transported.

The adopted amendment to §57.111 also reflects changes to scientific nomenclature and the reclassification of certain species, corrects errors, and makes nonsubstantive changes in the inter-

est of clarification and consistency, including the redesignation of elements of the rule's structure where necessary.

The adopted amendment to §57.111(16) clarifies that the provisions of the subchapter affect only the genus *Hydrocynus* and adds the correct subfamily name, which is necessary to make the provisions of the subchapter taxonomically accurate.

The adopted amendment to §57.111(16)(F) corrects a misspelling (*Pirambebas*) and excludes the genus *Piaractus* from the provisions of the subchapter. The adopted amendment is necessary to maintain accurate taxonomic references and to exempt a genus that is fairly popular in the pet trade and not deemed to be an ecological threat to native ecosystems.

The adopted amendment to §57.111(16)(G) adds the family and common names for tetras affected by the subchapter in order to provide clarity and maintain parallelism with the identification convention employed throughout the subchapter.

The adopted amendment to §57.111(16)(H) adds the family name for affected dourados in order to provide clarity.

The adopted amendment to §57.111(16)(J) revises the taxonomic references in the paragraph to conform with those prescribed by the American Fisheries Society. The amendment is necessary to ensure accurate taxonomic references.

The adopted amendment to §57.111(16)(M) adds the common names of carps and minnows subject to the provisions of the subchapter and adds two new genera (*Labeo* and *Catlocarpio*) to the list of prohibited carps and minnows, in addition to making changes to reflect reclassifications, corrections, and clarifications. Carp in the genera *Labeo* and *Catlocarpio* are nearly identical to those in two already-prohibited genera, *Cirrhinus* and *Catla*, respectively. Generally, exotic carp have caused a wide array of ecological problems in Texas and elsewhere; and it is reasonable to assume that the genera *Labeo* and *Catlocarpio* have the potential to cause similar problems. These genera were not restricted previously because there did not appear to be an importation threat. However, small specimens of *Catlocarpio* are beginning to become available in the international pet trade, including over the internet. *Catlocarpio* are large Asian carp that reach sizes of eight feet or more. Aquarium fish that rapidly grow very large are prime candidates for illegal releases in local waters. Therefore, it is prudent to restrict these genera now before major trade markets have developed as opposed to attempting to eliminate them after they have become established in food markets or the pet trade.

The adopted amendment to §57.111(16)(S) adjusts taxonomic references as necessary to reflect reclassification within the *Tilapia* family by the scientific community.

The adopted amendment to §57.111(16)(V) adjusts taxonomic references as necessary to reflect reclassification within the *Peridae* family by the scientific community.

The adopted amendment to §57.111(16)(W) adds taxonomic language to address differences of opinion within the scientific community regarding the family name of Nile perch.

The adopted amendment to §57.111(16)(X) corrects the common names of the species affected by the subparagraph. The amendment is necessary to improve clarity.

The adopted amendment to §57.111(16)(Z) corrects a misspelling (*Ruffe*). The amendment is necessary to maintain accurate taxonomic references.

The adopted amendment to §57.111(16)(DD) corrects an error by moving *Heteropneustidae* to subparagraph (AA). *Heteropneustidae* is the scientific name for the air sac catfishes family and should not be listed under the goby family. The amendment also adds a single genus of the goby family to the definition of harmful or potentially harmful fish, shellfish, and aquatic plants. Round gobies have already invaded the Great Lakes and have caused significant detrimental ecological impacts there by devouring native fishes and their eggs and by their aggressive habits of driving native species from their spawning, nursery, and feeding areas.

The adopted amendment to §57.111(16)(CC) adds the common name of the *Anguillidae* family. The amendment is necessary to improve clarity.

The adopted amendment to §57.111(16)(EE) and (FF) adds two new families (*Moronidae* and *Percichthyidae*) to the definition of harmful or potentially harmful fish, shellfish, and aquatic plants. The Asian and European *Moronidae* and the *Percichthyidae* are ecological counterparts of Texas native striped and white basses and would compete for the same ecological niches. The *Moronidae* have already become established in the Great Lakes, where they are known to eat the eggs of white bass and other native species and to hybridize with native bass. The *Percichthyidae*, or Chinese perches, also known as cold water groupers, are cold and salinity-tolerant fish with very large mouths that are very similar to bass and have the potential to be competitive to a detrimental extent with Texas native basses.

The adopted amendment to §57.111(17)(A) expands the prohibition on harmful or potentially harmful crayfish from a single genus to all southern hemisphere species. Virtually all crayfish species can cause ecological problems when introduced outside their natural ranges. Crayfish are a central component of freshwater food webs and ecosystems, acting as the dominant consumers of benthic invertebrates, detritus, macrophytes, and algae and as important forage for fish. Thus, additions to or removals of crayfish species from a native ecosystem often lead to large ecosystem effects, including changes in fish populations and losses in biodiversity. North American crayfish species are particularly susceptible to invasions from non-indigenous species because they have limited natural ranges. The single greatest threat to crayfish biodiversity worldwide is from accidental or intentional introduction of non-indigenous crayfish. In Europe, native crayfish have suffered from competition with introduced crayfish; but the greater impact has been caused by a fungal plague carried by non-indigenous species. Consequently, it is prudent to restrict non-indigenous crayfish species now before they become components of the aquaculture or pet industries and emerge as a significant problem.

The adopted amendment to §57.111(17)(C), (E), and (G) reflects reclassifications and makes clarifications. Under the current rules, a single genus of giant rams-horn snails and a single species of applesnails are prohibited. The amendment expands the prohibition to include the entire family, which now includes both of these groups as a result of reclassification. The expansion is necessary because many of these snails are significant agricultural and ecological pests, eating plants and carrying diseases and parasites. An exception has been made for the spiketop applesnail, which is the primary snail sold for aquarium culture. The spiketop applesnail is not cold-tolerant, does not eat larger aquatic plants, and is unlikely to become established or problematic in Texas. The amendment also alters taxonomic references to reflect reclassification within the

Penaeid shrimp family by the scientific community, which is necessary to maintain accurate taxonomic references.

The adopted amendment to §57.111(18)(A), (C), (I), and (L) revises scientific names, includes alternate common names (duckweed, water spinach), reflects reclassification of certain species by the scientific community (waterhyacinth), and adds eight species to the list of harmful or potentially harmful exotic aquatic plants in order to be consistent with United States Department of Agriculture and Texas Department of Agriculture regulations. The amendment is necessary to improve accuracy and clarity and to ensure that the rules do not conflict with federal provisions.

The adopted amendment to §57.111(19) and (31) clarifies the boundary description of the harmful or potentially harmful exotic species exclusion zone and explicitly states that shellfish and/or water from a quarantined facility may not come into contact with public water. The amendment is necessary to more accurately identify the area of the state to which the exclusion provisions apply and to explicitly state a prohibition so as to remove the possibility of ambiguity.

The adopted amendment to §57.111(32) adds a definition for "shellfish disease specialist." The amendment is necessary because the provisions of §57.114, concerning Health Certification of Exotic Shellfish, require that exotic shellfish be certified as disease free by a shellfish disease specialist. The amendment establishes the criteria that a person must meet in order to be regarded by the department as qualified to certify the health status of exotic shellfish.

Data and methodology used include the following studies, as well as surveys of the industry.

Cook, B., S. Choy, and J. Davie. undated. Potential ecological impacts of translocating redclaw crayfish, *Cherax quadricarinatus*. Online abstracts. www.vims.edu/tcs/ICC5_abstracts.htm.

De Moor, I. 2002. Potential impacts of alien freshwater crayfish in South Africa. *African Journal of Aquatic Science* 27:125-139.

Hanson, J.M., P.A. Chambers, and E.E. Prepas. 1990. Selective foraging by the crayfish *Orconectes virilis* and its impact on macroinvertebrates. *Freshwater Biology* 24:69-80.

Hepworth, D.K., and D.J. Duffield. 1987. Interactions between an exotic crayfish and stocked rainbow trout in Newcastle Reservoir, Utah. *North American Journal of Fisheries Management* 7:554-561.

Kats, L.B. and R.P. Ferrer 2003. Alien predators and amphibian declines: review of two decades of science and the transition to conservation. *Diversity and Distributions* 9:99-110.

Hobbs H. H. I.; Jass J. P.; and Huner J. V. 1989 A review of global crayfish introductions with particular emphasis on two North American species (Decapoda, Cambaridae). *Crustaceana* 56:303-309.

Huner J. V. 1977. Introductions of the Louisiana red swamp crayfish, *Procambarus clarkii* (Girard); an update. *Freshwater Crayfish* 3:193-202.

Lodge, D.M., M.W. Kershner, J.E. Aloï, and A.P. Covich. 1994. Effects of an omnivorous crayfish (*Orconectes rusticus*) on freshwater littoral food web. *Ecology* 75:1265-1281.

Lodge, D.M., T.K. Kratz, and G.M. Capelli. 1986. Long-term dynamics of three crayfish species in Trout Lake, Wisconsin. *Can. J. Fish. Aquat. Sci.* 43:993-998.

Lodge, D.M., and J.G. Lorman. 1987. Reductions in submersed macrophyte biomass and species richness by the crayfish *Orconectes rusticus*. *Can. J. Fish. Aquat. Sci.* 44:591-597.

Lodge, D.M., C.A. Taylor, D.M. Holdich, and J. Skurdal. 2000a. Nonindigenous crayfishes threaten North American freshwater biodiversity: lessons from Europe. *Fisheries Vol.* 25, No. 8:7-20.

Lodge, D.M., C.A. Taylor, D.M. Holdich, and J. Skurdal. 2000b. Reducing impacts of exotic crayfish introductions: new policies needed. *Fisheries Vol.* 25, No. 8:21-23.

Lorman J.G. and J.J. Magnuson. 1978. The role of crayfishes in aquatic ecosystems. *Fisheries* 3:6-8.

Masser, M.P. and D.B. Rouse. 1997. Red claw crayfish. Southern Regional Aquaculture Center. SRAC Publication No. 244.

Momot W. T. 1995. Redefining the role of crayfish in aquatic ecosystems. *Reviews in Fisheries Science* 3:33-63.

Olsen, T.M., D.M. Lodge, G.M. Capelli, and R.J. Houlihan. 1991. Mechanisms of impact on an introduced crayfish (*Orconectes rusticus*) on littoral congeners, snails, and macrophytes. *Can. J. Fish. Aquat. Sci.* 48:1853-1861.

Piper, L. 2000. Potential for expansion of freshwater crayfish industry in Australia. Rural Industries Research and Development Corporation. RIRDC Publication No. 00/142.

Short, W.J. 2000. Crustaceans 1 freshwater crayfish. Leaflet 0057, Queensland Museum, South Brisbane Australia.

Williams, E.H. Jr., L. Bunkley-Williams, C.G. Lilyestrom, and E.A.R. Ortiz-Corps. 2001. A review of recent introductions of aquatic invertebrates in Puerto Rico and implications for the management of nonindigenous species. *Caribbean Journal of Science*, Vol. 37, No. 3-4, 246-251.

Regulatory Impact Analysis. Although Government Code §2001.0225, Regulatory Analysis of Major Environmental Rules, does not apply to the rule, TPWD nonetheless provides the regulatory analysis, as follows. The benefit TPWD anticipates as a result of implementing the rule is protection of native aquatic ecosystems from the potential adverse effects of introduced species. The adverse effects of intentional and accidental introductions of exotic aquatic species into natural aquatic systems have been widely studied and documented around the world. Once established, invasive exotic species are extremely difficult if not impossible to eliminate.

The adopted rules will minimize cost and avoid unnecessary duplication by clarifying many scientific and popular names, therefore, decreasing confusion and lessening the cost of compliance.

Persons required to comply with the adopted rules will incur the costs associated with: (1) The cost of \$250 per year for an exotic species permit, (2) any business lost as a consequence of the prohibition of the intrastate sale of live Parastacidae for the pet trade, and (3) approximately eight hours per year for reporting and recordkeeping if a permit is required.

An alternative method of achieving the purpose of the rule that was considered was banning the sale of both live and dead Parastacidae to both in-state and out-of-state buyers. It was determined that, given present knowledge regarding this family, this approach would unnecessarily affect the business of raising Parastacidae for human consumption or sale out-of-state; accordingly, the department has adopted a less-restrictive rule.

The department finds that, compared to the alternative proposals considered and rejected, the rule will result in the best combination of effectiveness in obtaining the desired results and of economic costs not materially greater than the costs of the alternative regulatory methods considered.

The department received one comment opposing adoption of the rule. The commenter did not articulate a reason for opposing adoption. The department disagrees with the comment and responds that the rules are necessary to protect native aquatic ecosystems. No changes were made as a result of the comment.

The department received no other comments concerning the adoption of the proposed rules.

The amendments are adopted under the authority of Parks and Wildlife Code, §66.007, which authorizes the commission to regulate the importation, possession, sale, and placing into the water of this state harmful or potentially harmful exotic fish, shellfish, and aquatic plants, and under Agriculture Code, §134.020, which authorizes the commission to regulate the importation, propagation, and sale of harmful or potentially harmful exotic species by an aquaculturist.

§57.113. Exceptions.

(a) A person who holds a valid Exotic Species Permit issued by the department may possess, propagate, sell and transport to the permittee's private facilities exotic harmful or potentially harmful fish, shellfish and aquatic plants only as authorized in the permit provided the harmful or potentially harmful exotic species are to be used exclusively:

(1) as experimental organisms in a department approved research program; or

(2) for exhibit in a public aquarium approved for display of harmful or potentially harmful exotic fish, shellfish and aquatic plants.

(b) A person may possess exotic harmful or potentially harmful fish or shellfish, exclusive of grass carp, without a permit, if the fish or shellfish have been gutted, or in the case of oysters, if the oysters have been shucked or otherwise removed from their shells.

(c) A person may possess grass carp harvested from public waters that have not been permitted for triploid grass carp, without a permit, if the grass carp have been gutted.

(d) A person who holds a valid exotic species permit issued by the department may possess, propagate, transport or sell water spinach, triploid grass carp, silver carp, triploid black carp, commonly known as snail carp, bighead carp, blue tilapia (*Oreochromis aureus*), Mozambique tilapia (*O. mossambica*), Nile tilapia (*O. niloticus*), or hybrids between the three tilapia species, unless otherwise provided by conditions of the permit or these rules.

(e) An aquaculturist who holds a valid exotic species permit issued by the department may possess, propagate, transport, or sell Pacific white shrimp (*Litopenaeus vannamei*) provided the exotic shellfish meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules.

(f) An operator of a wastewater treatment facility in possession of a valid exotic species permit issued by the department may possess and transport permitted exotic species to their facility only for the purpose of wastewater treatment.

(g) A person may possess Mozambique tilapia in a private pond or private facility subject to compliance with §57.116(d) of this title (relating to Exotic Species Transport Invoice).

(h) The holder of a valid triploid grass carp permit issued by the department may possess triploid grass carp as provided by conditions of the permit and these rules.

(i) A licensed retail or wholesale fish dealer is not required to have an exotic species permit to purchase or possess:

(1) live individuals of triploid grass carp, silver carp, triploid black carp, bighead carp, blue tilapia, Mozambique tilapia, Nile tilapia or hybrids of those species held in the place of business, unless the retail or wholesale fish dealer propagates one or more of these species. However, such a dealer may sell or deliver these species to another person only if the fish have been gutted or beheaded; or

(2) Live Pacific white shrimp (*Litopenaeus vannamei*) held in the place of business if the place of business is not located within the exclusion zone described in §57.111 of this title (relating to Definitions). However, such a dealer may only sell or deliver this species to another person if the shrimp are dead and packaged on ice or frozen.

(j) The department is authorized to stock triploid grass carp into public waters in situations where the department has determined that there is a legitimate need, and when stocking will not affect threatened or endangered species, coastal wetlands, or specific management objectives for other important species.

(k) An aquaculturist who holds a valid exotic species permit issued by the department may possess, propagate, transport and sell Pacific blue shrimp (*Litopenaeus stylirostris*) provided the exotic shellfish are cultured under quarantine conditions in private facilities located outside the harmful or potentially harmful exotic species exclusion zone, and meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules.

(l) A person operating a mechanical plant harvester in accordance with the provisions of a valid exotic species permit issued by the department may remove and dispose of prohibited plant species from public or private waters only by means authorized in the permit.

(m) Any person may possess water spinach for personal consumption.

(n) An aquaculturist who holds a valid exotic species permit issued by the department may possess, propagate, transport, and sell Parastacidae. Live Parastacidae may be possessed without a permit only:

(1) at a restaurant or other food service establishment for purposes of on-premises consumption as food; or

(2) while being transported to an out-of-state destination.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 24, 2007.

TRD-200701559

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: May 14, 2007

Proposal publication date: December 22, 2006

For further information, please call: (512) 389-4775

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 365. INVESTMENT RULES SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §365.10

The Texas Water Development Board (board) adopts amendments to 31 TAC §365.10 concerning Ethics and Conflicts of Interest without changes to the proposed text as published in the March 16, 2007, issue of the *Texas Register* (32 TexReg 1483). The text will not be republished. Adopted amendments to this section are adopted to comply with the requirement of Texas Government Code, §2263.004, that the board adopt standards of conduct applicable to financial advisors or service providers who are not employees of the state agency, who may reasonably be expected to receive more than \$10,000 in compensation during a fiscal year, and who provide financial services to the state agency or advise the state agency or a member of the governing body of the state agency in connection with the management or investment of state funds.

The addition of §365.10(c) incorporates the language of Government Code, §2263.005, that financial analysts and service providers described by Government Code, §2263.004, should avoid:

(1) any relationship with any party to a transaction with the board or the Texas Water Resources Finance Authority (authority), other than a relationship necessary to the investment or funds management services that the financial advisor or service provider performs for the board or authority, if a reasonable person could expect the relationship to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the board or authority.

(2) any direct or indirect pecuniary interest in any party to a transaction with the board or authority, if the transaction is connected with any financial advice or service the financial advisor or service provider provides to the board or authority or to a member of the board in connection with the management or investment of state funds.

The addition of §365.10(d) requires that financial analysts or service providers described by Government Code, §2263.004, must report any relationship or pecuniary interest described in subsection (c) in writing to the board's executive administrator or designated representative, without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.

No comments were received concerning the proposed rulemaking.

The amendments are adopted under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and the Texas Government Code, §2263.004, which requires the Texas Water Development Board to adopt rules regarding standards of conduct applicable to financial advisors and service providers who are not employees of the board, who provide financial services to the state agency or advise the

state agency or a member of the governing body of the state agency in connection with the management or investment of state funds.

The amendments implement Texas Government Code, Chapter 2263.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 2007.

TRD-200701606

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

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Proposal publication date: March 16, 2007

For further information, please call: (512) 475-2052

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.104 - 700.106 and the repeal of §§700.107 - 700.114 and 700.413, without changes to the proposed text published in the February 9, 2007, issue of the *Texas Register* (32 TexReg 511). DFPS, like all state agencies, is required by Chapter 441 of the Texas Government Code to submit an agency-wide retention schedule for approval by the Texas Library and Archives Commission. DFPS's approved schedule lists record retention periods for all types of records held by DFPS, and is available on the DFPS website.

The justification of the amendments and repeals is to delete information that is duplicative of the official DFPS records retention schedule. In §700.104, the agency name and computer system references are updated, and subsections (c) and (d) are deleted because they contain information that is found in Subchapter B of this chapter (relating to Confidentiality and Release of Records). In §700.105, the agency name is updated. In §700.106 the agency name and computer system references are updated; and subsection (c) is replaced to accurately reflect that other entities are responsible for the retention and destruction of their own videotapes. Sections 700.107 - 700.114 and 700.413 are repealed because they duplicate the official records retention schedule, which is available on the DFPS website.

The amendments and repeals will function by improving access to the most comprehensive, current schedule for all agency records.

No comments were received regarding adoption of the sections.

SUBCHAPTER A. ADMINISTRATION

40 TAC §§700.104 - 700.106

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Chapter 441 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 2007.

TRD-200701576

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: June 1, 2007

Proposal publication date: February 9, 2007

For further information, please call: (512) 438-3437



40 TAC §§700.107 - 700.114

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Chapter 441 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Department of Family and Protective Services

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For further information, please call: (512) 438-3437



SUBCHAPTER D. SCHOOL INVESTIGATIONS

40 TAC §700.413

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that

the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Chapter 441 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 27. TOLL PROJECTS

SUBCHAPTER A. COMPREHENSIVE DEVELOPMENT AGREEMENTS

The Texas Department of Transportation (department) adopts amendments to §27.2, definitions, §27.3, general rules for private involvement, §27.4, solicited proposals, §27.5, unsolicited proposals, and new §27.7, design-build contracts, §27.8, conflict of interest and ethics policies, and §27.9, sanctions, all concerning comprehensive development agreements. The amendments to §27.5, new §27.7, and new §27.8 are adopted with changes to the proposed text as published in the December 1, 2006, issue of the *Texas Register* (31 TexReg 9693). The amendments to §§27.2 - 27.4 and new §27.9 are adopted without changes to the proposed text as published in the December 1, 2006, issue of the *Texas Register* (31 TexReg 9693) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS

Under Transportation Code, §223.203(e)(1), the Texas Transportation Commission (commission) is required to adopt rules establishing criteria for the prequalification of a private entity to submit a detailed proposal to provide services under a design-build contract that include the precertification requirements applicable to providers of engineering services and the qualification requirements for bidders on highway construction contracts. Rules for design-build projects adopted pursuant to that subsection are also required to provide for an expedited selection process that includes design innovation as a selection criterion.

The amendments and new sections implement requirements to adopt an ethics policy applicable to comprehensive development agreement procurements. The ethics policy is required to include conflict of interest guidelines applicable to private entities interested in participating in the department's comprehensive development agreement program and provisions relating to the acceptance of gifts and benefits by department employees. The amendments and new sections also prescribe rules of contact that regulate communications between proposers or any of its team members and the commission, department, and third parties involved in a procurement. The commission has prescribed conflict of interest provisions and communications restrictions in order to provide a fair and unbiased comprehensive development agreement procurement process and to ensure high standards of ethics and fairness in the administration of the comprehensive development agreement program.

The amendments and new sections concerning sanctions are applicable to private entities participating in the department's comprehensive development agreement program. The new provisions are modeled after the department's existing rules pertaining to contractor sanctions. The purpose of these provisions is to ensure high standards of ethics and fairness in the administration of the comprehensive development agreement program and to provide the department the appropriate remedy should a private entity engage in prohibited conduct.

In order to ensure the efficient administration of the comprehensive development agreement program and to ensure the commission and department further evaluate only those proposals that provide for the most efficient use of department resources, the amendments and new sections also clarify that the department, rather than the commission, approves the short list of entities considered most qualified to submit detailed proposals for a project, and prescribe additional information that must be contained in an unsolicited proposal, as well as additional criteria the commission will consider in determining whether to authorize the issuance of a request for competing proposals and qualifications for a project described in an unsolicited proposal.

The amendments and new sections finally make revisions necessary to ensure consistency in the processing of solicited and unsolicited proposals, and to make other nonsubstantive changes.

Amended §27.2, Definitions, defines words and terms used in new §§27.7 - 27.9. The definition of conflict of interest is consistent with the Federal Highway Administration's organizational conflict of interest regulations contained in 23 CFR §636.116, and is intended to provide a fair and unbiased comprehensive development agreement procurement process. That definition, and other definitions used in new §27.8, Conflict of interest and ethics policies, are authorized by Transportation Code, §223.209, which provides that the commission shall adopt rules, procedures, and guidelines governing selection of a developer for a comprehensive development agreement and negotiations to promote fairness, obtain private participants in projects, and promote confidence among those participants. Other amendments to §27.2 make grammatical and other nonsubstantive changes and renumber existing provisions.

Amended §27.3(e) adds terminology used in comprehensive development agreement procurement documents, recognizes that procurement documents will include additional rules of contact required by §27.8(d), and makes grammatical changes. Amended §27.3(l) and (o) clarify that those provisions apply to projects eligible for development under a comprehensive devel-

opment agreement. Amended §27.3(p) makes a grammatical change, and §27.3(q) is removed as a result of the proposal of conflict of interest and ethics policies in new §27.8.

In order to ensure the efficient administration of the comprehensive development agreement program, amended §27.4(d) clarifies that the department, rather than the commission, approves the short list of entities considered most qualified to submit detailed proposals for a project, and makes nonsubstantive changes. Other amendments in §27.4 clarify that certain provisions apply to projects eligible for development under a comprehensive development agreement, and clarify that project financing is an authorized part of a comprehensive development agreement.

In order to ensure the efficient administration of the comprehensive development agreement program and the selection and scheduling of projects developed under the program, and to ensure the commission and department further evaluate only those proposals that provide for the most efficient use of department resources, amended §27.5(b) prescribes additional information that must be contained in an unsolicited proposal for a comprehensive development agreement project. The additional information will better allow the commission and the department to assess any unsolicited proposals consistent with the department's goals and limited financial and personnel resources. Those goals include better control by the department over the development, delivery, and scheduling of projects, which should improve the nature and substance of unsolicited proposals received by the department.

Amended §27.5(c) prescribes additional criteria on which a recommendation to the commission to issue a request for competing proposals and qualifications will be based. These criteria, and the additional information required to be contained in a proposal under §27.5(b), are intended to ensure that the commission and department further evaluate only those proposals that best meet the department's transportation planning goals and policies and that provide for the most efficient use of limited department and proposer resources.

Amended §27.5, Unsolicited proposals, also makes revisions necessary to ensure consistency in the processing of solicited and unsolicited proposals, makes changes to ensure consistency in terminology used in this subchapter, and to make other nonsubstantive changes to better clarify the requirements of this section.

Under new §27.7, Design-build contracts, the department will be authorized to prequalify private entities to submit detailed proposals to provide services under a design-build contract. Those contracts may be procured, as determined by the department, using a one-step process where entities are prequalified to respond to a request for proposals, and the department may enter into a design-build contract based solely on an evaluation of detailed proposals submitted in response to a request for proposals. This is unlike other types of comprehensive development agreements where a two-step procurement process is used, first to short-list the most qualified proposers to submit detailed proposals, and then to select the proposer whose detailed proposal provides the best value. As the prequalification process authorized under new §27.7 is a substitute for the evaluation of qualification submittals pursuant to a request for qualifications, each entity that is part of a proposer team that intends to submit a detailed proposal must be prequalified or precertified in accordance with the requirements of §27.7.

New §27.7(a) sets out the applicability of the new rule to design-build contracts under the department's comprehensive development agreement program.

New §27.7(b) provides a process for the prequalification of providers of construction, maintenance, and operations services to propose on design-build contracts under the department's comprehensive development agreement program. Private entities that are prequalified will be eligible to propose on design-build contracts in response to a request for proposals.

New §27.7(c) provides a process for the precertification of providers of engineering, architectural, or surveying services to propose on design-build contracts under the department's comprehensive development agreement program. Private entities that are precertified will be eligible to propose on design-build contracts in response to a request for proposals.

New §27.7(d) provides a process for the administrative qualification of providers of engineering, architectural, or surveying services on design-build contracts as required by the department's audit office. Administrative qualification includes an examination of a private entity's accounting system, an audit of its indirect cost rate, salary rates, and direct costs.

New §27.7(e) sets out the evaluation process for design-build contract proposals submitted in response to a request for proposals, and includes design innovation as a required criterion. The evaluation process will be comprised of an evaluation of detailed proposals received from prequalified private entities only. The department will not issue a request for qualifications to qualify entities to submit detailed proposals.

New §27.8, Conflict of interest and ethics policies, prescribes ethical standards of conduct applicable to private entities, including consultants and subconsultants, participating in the department's comprehensive development agreement program. A private entity's failure to comply with these standards of conduct may result in the private entity's exclusion from participation in a project or sanctions being imposed under §27.9, Sanctions.

New §27.8(b) prohibits a proposer, developer, consultant, or subconsultant participating in the comprehensive development agreement program, or an affiliate of any of those entities, from offering, giving, or agreeing to give a gift or benefit to a member of the commission or to a department employee whose work for the department includes the performance of procurement services relating to a comprehensive development agreement project, or who participates in the administration of a comprehensive development agreement. Section 27.8(b) provides certain exceptions to this prohibition for department consultants and subconsultants that are not a member of a proposer or developer team that are consistent with state laws relating to gifts to public servants. No exceptions are made for proposers or developers because of the appearance of impropriety or competitive advantage that would result from the offer or acceptance of a gift or benefit.

New §27.8(c) prescribes department policy on conflicts of interest relating to consultants and subconsultants participating in the comprehensive development agreement program. This policy is necessary to protect the integrity and fairness of the program and all procurements carried out by the department as part of the program.

Section 27.8(c)(2) provides that this policy applies to all comprehensive development agreement projects undertaken by the department, and applies to consultants and subconsultants and

their individual employees who participated in the performance of services for the department. The policy may by extension prohibit or restrict the ability of a proposer to have a consultant or subconsultant participate on the proposer team as an equity owner or team member, act as a consultant or subconsultant to the proposer, or have a financial interest in the proposer or an equity owner or team member of the proposer.

Section 27.8(c)(3) prescribes the period of time in which a conflict of interest will be deemed to exist, and the period of time the resulting prohibition or restriction provided in §27.8(c) will continue. Section 27.8(c)(4) provides that if a conflict of interest is determined to apply to an individual, it will not apply to the individual's new place of employment, other than an affiliate of its previous employer. The prohibition or restriction will continue to apply to the individual for the prescribed period of time. Section 27.8(c)(5) clarifies that the requirements of §27.8(c) do not limit, modify, or otherwise alter the applicability of the Federal Highway Administration's organizational conflict of interest regulations, which the department must comply with in the case of a federal-aid project.

Section 27.8(c)(6) prescribes general conflict of interest standards, which generally prohibit a consultant providing consultant services to the department with respect to a comprehensive development agreement project from being a proposer or participating as an equity owner, team member, consultant, or subconsultant of or to a proposer for that project, or having a financial interest in any of the foregoing entities with respect to that project. Except as provided in §27.8(c)(8) and (9), this prohibition would not apply to participation in a different comprehensive development agreement project.

Section 27.8(c)(7) contains exceptions to the prohibitions in §27.8(c)(6) for consultants providing preliminary engineering and architectural services, environmental services, and traffic and revenue services. Section 27.8(c)(8) prohibits consultants actively engaged and performing procurement services or financial services with respect to a comprehensive development agreement project from being a proposer or participating as an equity owner, team member, consultant, or subconsultant of or to a proposer for that project or any other comprehensive development agreement project, or having a financial interest in any of the foregoing entities with respect to any comprehensive development agreement project. Consultants providing those services have access to information that could provide a competitive advantage to a proposer.

Section 27.8(c)(9) prescribes conditions for consultants that have completed the performance of consultant services for the department to be a proposer or to participate as an equity owner, team member, consultant, or subconsultant of or to a proposer for a comprehensive development agreement project, or to have a financial interest in any of the foregoing entities with respect to a comprehensive development agreement project.

Section 27.8(c)(10) prescribes the process for a consultant, proposer, or developer to submit a request for a determination as to whether certain participation in a comprehensive development agreement project, or the performance of particular services with respect to a comprehensive development agreement project would constitute a conflict of interest, or to request approval of an exception to the applicability of the conflict of interest policies, including an appeal of a previous determination that a conflict of interest exists. Section 27.8(c)(10) also prescribes the criteria that will be considered by the executive director in reviewing a request.

Section 27.8(c)(11) concerns the applicability of the conflict of interest policies where a consultant is providing more than one category of consultant services to the department. Section 27.8(c)(12) concerns the eligibility of an entity participating with respect to a comprehensive development agreement project as a proposer or developer, or as an equity owner, team member, consultant, or subconsultant of or to a proposer or developer, or having a financial interest in any of the foregoing entities to provide consultant services (other than procurement services) to the department for another comprehensive development agreement project.

Section 27.8(c)(13) allows the department to restrict the scope of services a consultant or subconsultant may be eligible to perform for the department in order to further the intent and goals of §27.8(c), and to condition a determination that a conflict of interest does not exist or an exception to the applicability of the conflict of interest policies as appropriate to further the intent and goals of §27.8(c), including by requiring the consultant, subconsultant, proposer, or developer to execute confidentiality agreements, institute ethical walls, or segregate certain personnel from participation in a project or the performance of consultant services.

Section 27.8(c)(14) provides that the provisions in §27.8(c) do not address every situation that may arise in the context of the department's comprehensive development agreement program nor require a particular decision or determination by the executive director. The department retains the ultimate and sole discretion to determine on a case-by-case basis whether a conflict of interest exists and what actions may be appropriate to avoid, neutralize, or mitigate any actual or potential conflict, or the appearance of any conflict.

In order to provide a fair and unbiased procurement process, new §27.8(d) prescribes rules of contact regulating communications between proposers for a comprehensive development agreement project or any of its team members and the commission, the department, and third parties involved in the procurement. The prescribed rules must be contained in a request for qualifications, request for proposals, or request for competing proposals and qualifications. The rules of contact generally prohibit any ex parte communication regarding the project, request for qualifications, request for proposals, or request for competing proposals and qualifications or the procurement with any member of the commission or with any department staff, advisors, contractors, or consultants involved in the procurement until the earliest of the execution and delivery of the comprehensive development agreement, the rejection of all qualifications submissions or proposals by the department, or the cancellation of the procurement.

Certain communications may be allowed by the department in exceptional circumstances, and confidential communications may be made to a department employee not involved in the procurement. Section 27.8(d) allows the executive director to disqualify a proposer from the procurement and participation in the project at issue or to impose another sanction under §27.9 if it is determined that a proposer has engaged in any improper communications in violation of the rules of contact. Section 27.8(e) provides certain exceptions to the rules of contact.

New §27.9, Sanctions, is authorized by Transportation Code, §223.209, which provides that the commission shall adopt rules, procedures, and guidelines governing selection of a developer for a comprehensive development agreement and negotiations

to promote fairness, obtain private participants in projects, and promote confidence among those participants.

Section 27.9(a) pertains to general sanction procedures. Subsection (a)(1) provides that a copy of the sanction rules will be included in certain procurement documents issued by the department. However, non-compliance with this provision will not affect the applicability of the sanction rules. Subsection (a)(2) references the criteria the department will consider when referring a private entity to the executive director for sanction action. Subsection (a)(3) sets forth the method by which a private entity will be notified of sanction action, the contents of such notice, as well as the effective date of the sanction. Subsection (a)(4) provides that the executive director and the private entity may modify the procedure for considering the sanction. Subsection (a)(5) specifies that sanction action does not affect the private entity's obligations under a comprehensive development agreement or any other agreement with the department nor does the action limit potential remedies available to the commission. Subsection (a)(6) provides that the term "private entity" also encompasses any affiliated entities and identifies what constitutes an affiliated entity. Subsection (a)(7) indicates that the private entity will be held responsible for the acts of individuals or other entities acting on behalf of the private entity.

Section 27.9(b) relates to the hearing process applicable to sanction actions. Subsection (b)(1) indicates that the private entity has the opportunity for a hearing as provided in §1.21 of the department's rules (pertaining to Procedures in Contested Cases). Subsection (b)(2) provides for a stay of sanctions (except for suspension action) pending the hearing process. Subsection (b)(3) specifies that the commission may reduce, eliminate or modify the sanction in the public interest. Subsection (b)(4) provides an exception to the hearing process if the private entity is sanctioned through the use of a reprimand.

Section 27.9(c) creates guidelines for the application of sanctions. Subsection (c)(1) indicates that the executive director will determine whether a private entity has committed a sanctionable act or omission. Subsection (c)(2) provides that the executive director will consider all facts and circumstances, including the seriousness of the act or omission and any mitigating circumstances, in determining whether or not a private entity will be sanctioned. Subsection (c)(3) sets forth a non-exclusive list of mitigating circumstances which may be considered by the executive director in deciding whether or not to impose sanctions. Subsection (c)(4) explains that the executive director will determine the level of sanction to be imposed on the private entity. Subsection (c)(5) sets forth the concept of progressive sanction action, whereby the executive director may use increasingly more severe sanctions to achieve compliance with the department's policies and procedures. Subsection (c)(6) indicates that multiple violations by a private entity may result in multiple sanctions which may be imposed consecutively or in any order. Subsection (c)(7) authorizes the imposition of a lesser sanction as opposed to the maximum sanction permitted by the rules. Subsection (c)(8) grants the executive director the discretion to reduce, eliminate, or modify a sanction in the best interest of the state or the comprehensive development agreement program.

Section 27.9(d) relates to suspension action. Subsection (d)(1) provides that the executive director may immediately suspend a private entity without a prior hearing if the private entity is notified of a debarment. Subsection (d)(2) indicates that a suspension terminates when a final order is entered after a hearing or when ordered by the executive director.

Section 27.9(e) details the grounds for sanction action, specific sanction levels and subsequent use of sanction information. Subsection (e)(1) enumerates the specific acts or omissions for which the executive director may sanction a private entity. Subsection (e)(2) provides that the executive director will determine the sanction level and sets forth the four levels of sanction action, ranging from reprimand to permanent debarment. Subsection (e)(3) indicates that a debarment may not be for more than the period of debarment established by the state or federal agency on whose actions the debarment is based. Subsection (e)(4) allows the department to consider any sanction imposed against a private entity during the evaluation of qualification submittals and other proposals submitted by the private entity during a procurement process.

COMMENTS

Comments on the proposed amendments and new sections were received from Zachry American Infrastructure (ZAI).

Comment: ZAI commented that the department is creating market disincentives by making the evaluation of unsolicited proposals consistent with solicited proposals. ZAI indicated that the intent of the unsolicited process is to encourage the private sector to use innovation and creativity to provide transportation solutions and this will not likely occur if the process is standardized.

Response: Transportation Code, §223.203 clearly contemplates that the evaluation of unsolicited proposals will be consistent with the evaluation of solicited proposals. For example, §223.203(c) requires the department to publish a notice advertising a request for competing proposals and qualifications that includes the criteria to be used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which proposals must be received if the department decides to issue a request for qualifications for a proposed project or the department authorizes the further evaluation of an unsolicited proposal. No change has been made.

Comment: ZAI commented that the requirement in the proposed rules that the proposer provide more detailed technical information to the department will increase the cost of preparing and submitting an unsolicited proposal, and therefore reduce the attractiveness of doing so for the private sector.

Response: The additional information will better allow the commission and the department to assess any unsolicited proposals consistent with the department's goals and limited financial and personnel resources. Those goals include better control by the department over the development, delivery, and scheduling of projects, which should improve the nature and substance of unsolicited proposals received by the department. No change has been made.

Comment: ZAI commented that the preliminary evaluation criteria assume the department can evaluate whether meaningful competition can be generated if the unsolicited proposal moves forward. ZAI indicated that the market is well suited to determine if the concepts in a proposal are of interest to the market, and if so, competitors will come forth, and therefore this evaluation element should be deleted.

Response: One of the department's strategies for responding to the state's mobility needs is to increase competitive pressure to drive down the cost of transportation projects. The comprehensive development agreement project delivery method is being used to encourage cost effective solutions to long term transportation problems. The department is implementing processes

to encourage more competition among companies that do business with the department. While, as ZAI notes, there are provisions in the rules that allow the department to proceed with a single proposer, it will not proceed with a procurement if there is no indication that meaningful competition can be generated. No change has been made.

Comment: ZAI commented that the proposed rule changes do not address any timetables for the department to evaluate, and if appropriate, go forward with the competitive process once an unsolicited proposal is submitted.

Response: While the department understands that timetables may help to reduce uncertainty regarding the process for the private sector, the length of time it takes to carry out the procurement process is dependent on the nature and scope of a project. The department has put forth a concerted effort to develop programmatic documents and other materials in order to streamline the procurement process. No change has been made.

Comment: ZAI stated that the proposed rule changes do not address how the scope, content, and other elements of an unsolicited proposal may or may not be altered or modified by the department prior to the competing proposal process. ZAI contends the intellectual integrity and proprietary nature of the proposer's concepts should be protected. ZAI states that any modification should be in consultation with the original proposer.

Response: In carrying out the unsolicited proposal procurement process, the department endeavors to protect a proposer's proprietary concepts as much as possible. However, the department has to describe the project opportunity in any request for qualifications or request for proposals. The department may reduce the scope of a project as proposed in an unsolicited proposal if the original proposer desires to keep aspects of their proposal confidential or as necessary to ensure compliance with the criteria for recommending the issuance of a request for competing proposals and qualifications under §27.5(c), such as the project's furtherance of state, regional, and local transportation plans and goals, and consistency with system planning objectives and priorities and projects under development. Project scope will be one of the issues discussed with proposers during the one-on-one meeting process. No change has been made.

Comment: ZAI commented that some of the specific information that would now be required in an unsolicited proposal under §27.5(b)(1) cannot be provided if a locally preferred alternative has not been identified through the NEPA process. ZAI suggests that this information be provided "where available."

Response: The change has been made.

Comment: ZAI indicated that it will be difficult to quantify the "potential impacts of competing facilities" on the proposed project at this early stage of the process.

Response: Section 27.5(b)(10) does not require an identification of specific impacts that are unknown or uncertain at the time a proposal is submitted. No change has been made.

Comment: ZAI noted that while other sections in this chapter mention the department's goal to foster design or other innovation, that is not one of the preliminary evaluation factors listed in §27.5(c), and ask whether this should be considered in the evaluation.

Response: The change has been made.

Comment: ZAI requested general clarification regarding the applicability of new §27.7 to concession contracts and whether

the department intends to pre-qualify members of a concession team.

Response: The department does not intend to pre-qualify members of a concession team. Members of teams proposing on concession projects will be prequalified through the shortlisting process set forth in §27.4(d). Proposed new §27.7 only applies to design-build CDAs, it does not apply to concession CDAs, as set forth in proposed new §27.7(a). Therefore, a company that is not prequalified in accordance with new §27.7 is precluded from proposing on a design-build contract, but is not precluded from participating as a proposer on a concession contract. No change has been made.

Comment: ZAI said that the department has not provided a copy of the confidential questionnaire required to be submitted to the department as part of the prequalification application process and that the department should develop and provide the confidential questionnaire.

Response: The department disagrees with the comment. The confidential questionnaire is a standard form maintained by the department's construction division and currently used by the department in its prequalification program for let projects. Specifically, it is Form 2065 and available on the department's website at www.dot.state.tx.us/forms/txdotforms.htm#prequalification.

Comment: ZAI asked whether the department can protect the confidentiality of information submitted in the confidential questionnaire.

Response: The department will follow the procedures regarding requests for public information set forth in the Public Information Act (Act), Government Code, Chapter 552. If the department received a request for information contained in a confidential questionnaire, the department, in accordance with the Act, would request a ruling from the Office of the Attorney General (OAG) regarding the confidentiality of the information submitted in that questionnaire. In previous open records rulings, the OAG has ruled that information contained in confidential questionnaires submitted to the Construction Division as part of the department's prequalification program may be withheld from disclosure. No change has been made.

Comment: ZAI asked if the department would publicly identify those prequalification applicants for whom the department grants waiver from the audited financial qualification requirements of proposed new §27.7(b)(1)(A).

Response: While the department appreciates the commenter's interest in the design-build CDA program, this question does not pose a substantive comment on the operation of the proposed rule. However, the department notes that if a particular project satisfied the criteria for waiver, that fact would likely be noted in the request for proposals for the project. No change has been made.

Comment: ZAI commented that the five year bar in §27.8(c)(3)(B) on involvement in any project on which an individual worked for the department should be a two year bar.

Response: The primary reason for imposing a bar is because the performance of services for the department provides the individual with access to information which could provide a competitive advantage to the proposer or developer team that person joins. The five year period allows sufficient time for any effect on that project or the comprehensive development agreement program to be reduced to an acceptable level, while allowing that person to pursue his or her professional career. A change has been

made to clarify that the bar in §27.8(c)(3)(A) and (B) runs for a one or five year period starting from when the performance of services ends.

Comment: ZAI stated that there is a discrepancy between §27.8(c)(3)(B) and §27.8(c)(6), and implies there is also a discrepancy with §27.8(c)(9). ZAI indicates that the varying rules for each type of consulting service make this section very difficult to decipher, interpret, and implement.

Response: The department does not believe there is a discrepancy between those paragraphs. Section 27.8(c)(3) prescribes the period in which a prohibition or restriction continues if the executive director determines that the performance of services by a consultant or subconsultant raises a conflict of interest. Section 27.8(c)(5) - (9) contains the provisions prescribing when a conflict of interest would be deemed to exist for various types of services unless an exception is granted by the executive director, or would not be deemed to exist. No change has been made.

Comment: ZAI commented that the provision in §27.8(c)(7)(E) is ambiguous, and asked how the department would determine that the consultant's prior traffic and revenue services would have no impact on the project's plan of finance.

Response: Section 27.8(c)(7) concerns a consultant that performed and completed traffic and revenue services for a comprehensive development agreement project that wishes to be a proposer or participate as an equity owner, team member, consultant, or subconsultant of or to a proposer for the same project, or have a financial interest in any of the foregoing entities with respect to that project. Lenders may require the firms providing those services for the department and a proposer to be different because of a perceived conflict if the same firm provided traffic and revenue services for both entities, and could decline to provide financing if the firms are not different. No change has been made.

Comment: ZAI indicated that the proposed rules of contact in §27.8(d) have a couple of unreasonable provisions.

First, ZAI views the prohibition against offerors and team members communicating with any other team as far too broad and counterproductive for the legitimate conduct of competitive procurements. ZAI asserted that federal procurements do not prohibit all communication between competitors, but rather require a certification that prices have been arrived at independently and there has been no communication between an offeror and any third party for the purpose of restricting competition by communications regarding (i) prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate prices.

ZAI stated that there are many good reasons for potential competitors to discuss the terms and conditions of a procurement and provide joint or industry comments on defective or unreasonable procurement provisions and suggest changes or clarifications that would be fair and reasonable to all involved. ZAI indicated that the department should consider changing the rules of contact to mirror the federal approach.

Response: The rules of contact, like the federal rules, are intended in part to prevent bid rigging, price fixing, or other forms of collusion. The commission believes that the better practice in controlling collusion is to prohibit a proposer or any of its team members from communicating with another proposer or its team members with regard to the project, request for qualifications, request for proposals, or request for competing proposals and qualifications, or either team's qualifications submittal or pro-

posals, rather than requiring a certification after the fact that those communications did not occur. The department has and will continue to request, outside of a procurement, industry wide comments on procurement provisions, and will continue to hold one-on-one meetings with proposers to obtain comments and provide clarifications regarding project specific provisions. No change has been made.

Comment: ZAI commented that the use of an ombudsman to receive confidential communications about the procurement is unusual and could lead to miscommunication as the ombudsman tries to disguise the source of the comments or criticism. ZAI indicated that it may not be bad so long as an offeror may, if desired, communicate criticisms and comments on the procurement directly to the procurement representative.

Response: The ombudsman provisions in a request for qualifications or request for proposals would not prevent a proposer from submitting comments directly to the department's procurement representative. In practice, the department envisions requiring proposers to submit confidential communications in an attachment to a cover letter or email to the ombudsman. The attachment could not contain identifying information. That would allow the ombudsman to simply forward the attachment to the procurement representative. No change has been made.

The department is adopting §27.7 with changes by deleting proposed §27.7(d) and relettering the subsequent subsection accordingly. The department deletes this provision because it is inapplicable to a design-build CDA project. The provision is only applicable to contracts procured and negotiated under the Professional Services Procurement Act. Precertification of providers of professional services, including engineering services, for a design-build CDA project will not require submittal or negotiation of costs for those services. Rather, costs for those services will be a component of the ultimate cost proposal submitted by a prequalified team in response to a request for proposals for a design-build CDA project.

43 TAC §§27.2 - 27.5, 27.7, 27.9

STATUTORY AUTHORITY

The amendments and new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.203, which provides that the commission shall adopt rules establishing criteria for the prequalification of a private entity to submit a detailed proposal to provide services under a design-build contract, and Transportation Code, §223.209, which provides that the commission shall adopt rules, procedures, and guidelines governing selection of a developer for a comprehensive development agreement and negotiations to promote fairness, obtain private participants in projects, and promote confidence among those participants.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 223, Subchapter E.

§27.5. Unsolicited Proposals.

(a) **Applicability.** Private entities may submit unsolicited proposals to the department requesting participation in an eligible project. Unsolicited proposals that comply with the requirements of this section shall be processed in accordance with the requirements of this section.

(b) **Proposal contents.** A proposal requesting department participation in a proposed project shall be filed with the department and must include the following information:

(1) the limits, scope, and location of the proposed project, including, where applicable and available, project length, project termini, number of lanes and lane miles, number and type of structures, and preliminary right-of-way requirements;

(2) all proposed interconnections with other transportation facilities and improvements to those facilities that will be necessary if the project is developed;

(3) if available, a conceptual project design and preliminary geotechnical information;

(4) information describing how the project will be consistent with the Statewide Transportation Plan and, if appropriate, with the metropolitan transportation plan developed by the metropolitan planning organization;

(5) the results expected from project implementation, including anticipated financial performance and improvement to mobility and capacity, and the critical factors for the project's success;

(6) all studies previously completed by the proposer concerning the project;

(7) information concerning the experience, expertise, technical competence, and qualifications of the proposer and of each member of the proposer's management team and of other key employees, consultants, and subcontractors, including the name, address, and professional designation of each member of the proposer's management team and of other key employees, consultants, and subcontractors, the capability of the proposer to undertake the proposed project, and information responsive to the evaluation criteria listed in §27.4(d) of this subchapter;

(8) a specific description of the level and nature of participation sought from the department, including technical support and financial participation, and the desired schedule for that participation;

(9) to the extent then available, information relevant to the department's performance of its environmental review responsibilities under §27.3(l) and (m) of this subchapter;

(10) a description of potential social, economic, and environmental impacts and potentially competing facilities, including the potential impacts of competing facilities on the proposed project;

(11) other information of probable interest to the department; and

(12) the proposal review fee required by §27.3(h) of this subchapter.

(c) **Preliminary evaluation of unsolicited proposal.** Any proposal properly filed with the department in accordance with subsection (b) of this section and accompanied by the proper proposal review fee will be reviewed by the department. The department may meet with the proposer as necessary to clarify the proposal, or may issue requests for clarification. Based on that review and any clarification, the department will determine whether to further evaluate its requested participation in the applicable project. If the department determines that further evaluation of the proposal is warranted, a recommendation will be made to the commission to issue a request for competing proposals and qualifications. That recommendation shall be based on whether the proposed project:

(1) enhances the state transportation network, based on the project's:

(A) compatibility with existing and planned transportation facilities;

(B) furtherance of state, regional, and local transportation plans, programs, policies, and goals; and

(C) consistency with system planning objectives and priorities and projects under development;

(2) is ready to proceed to procurement, based on project constraints and characteristics, financial resources designated or available for the proposed project, the status of environmental approvals, project acceptability, and whether meaningful competition can be generated;

(3) includes or is likely to foster design or other innovation; and

(4) such other criteria as the department deems relevant.

(d) Approval to request competing proposals and qualifications. If the recommendation is that the department further evaluate the proposal and its requested participation in the applicable project, and the commission approves that recommendation, the department will publish notice of that decision and provide an opportunity for the submission of competing proposals and qualifications as provided in this section. The department will publish a notice in the *Texas Register* and in one or more newspapers of general circulation in this state. The notice will state that the department has received an unsolicited proposal under these rules, that it intends to evaluate the proposal, that it may negotiate a comprehensive development agreement with the proposer based on the proposal, and that it will accept for simultaneous consideration any competing proposals and qualifications that the department receives in accordance with these rules within 45 days of the initial publication of the notice in the *Texas Register*, or such additional time as authorized by commission order. In determining whether to authorize additional time for submission of competing proposals and qualifications, the commission will consider the complexity of the proposed project. The notice will summarize the proposed project, and identify its proposed location and any proposed interconnections with other transportation facilities. The request for competing proposals and qualifications will specify the criteria that will be used to evaluate the proposals, and the relative weight given to the criteria. The department may provide traffic counts, forecasts, conceptual designs, and other available technical studies, reports, and data either in the request for competing proposals and qualifications or upon request of any entity responding to the request. The department may also elect to furnish the request for competing proposals and qualifications to businesses in the private sector that the department otherwise believes might be interested and qualified to participate in the project which is the subject of the request for competing proposals and qualifications.

(e) Submission of revised proposal by original proposer. The private entity submitting the original unsolicited proposal shall be required to submit a proposal and qualification submittal in response to the request for competing proposals and qualifications. A proposal and qualification submittal submitted by that entity and any other entity in response to a request must contain the information required by subsection (b) of this section and any other information required in the request for competing proposals and qualifications.

(f) Exclusive procedure to consider competing proposals and qualifications submittals. Failure by a prospective proposer to submit a competing proposal and qualification submittal within the 45-day period or such additional time as authorized by the commission, shall preclude the proposal and qualification submittal from consideration by the department unless and until the department terminates consideration of, or negotiations on, the original unsolicited proposal, as sup-

plemented in response to the request for competing proposals and qualifications, and any and all competing proposals and qualification submittals received within that time period. The department shall not be obligated to grant requests to extend the time period to submit competing proposals and qualification submittals. The receipt of one or more competing unsolicited proposals during that period will not trigger the posting or publication of a new notice or the commencement of any new time period.

(g) Noncompeting proposals. If the department receives proposals that have certain characteristics in common with the original unsolicited proposal, yet differ in other material respects, the department reserves the right, in its sole discretion, to treat such a proposal as either a competing proposal and qualification submittal or a noncompeting proposal. Because of the consequences to a proposer of failing to submit a competing proposal and qualification submittal within the 45-day period, or such additional time as authorized by the commission, prospective proposers are strongly urged to monitor the department's notices of unsolicited proposals received, and be prepared to submit within that time period if they perceive that a proposal they are considering or are preparing bears certain similarities to, or has characteristics in common with, an unsolicited proposal which is the subject of a notice. A proposal that is deemed to be noncompeting will be evaluated as a new unsolicited proposal in accordance with this section.

(h) Evaluation of proposals - competing proposals and qualification submittals. Upon the expiration of the 45-day period, or such additional time as authorized by the commission, the department will subject the revised proposal submitted by the original proposer, together with any and all properly submitted competing proposals and qualification submittals, to the following evaluation process. If one or more properly submitted competing proposals and qualification submittals are received, the department shall review the proposals and qualification submittals utilizing the evaluation criteria set forth in §27.4(d) of this subchapter and the request for competing proposals and qualifications, and the information specified in subsection (b) of this section. The department will identify and approve a short-list that is composed of those proposers that are considered most qualified to submit detailed proposals for the proposed project, and the process will proceed in the manner described in §27.4(e) - (l) of this subchapter.

(i) Evaluation of proposals - no competing proposals and qualification submittals. If no properly submitted competing proposal and qualification submittal is received, the department will evaluate the revised proposal submitted by the original proposer, proceeding, to the extent applicable, in the manner described in §27.4(h) - (l) of this subchapter.

§27.7. *Design-Build Contracts.*

(a) Applicability. The department may prequalify a private entity to submit a detailed proposal to provide services under a design-build contract. The department is not required to publish a request for qualifications for a design-build contract, and may enter into a design-build contract based solely on an evaluation of detailed proposals submitted by prequalified private entities in response to a request for proposals. If the department develops a concept for private participation in an eligible design-build project, or proceeds with the further evaluation of an unsolicited proposal for an eligible design-build project, and chooses to prequalify private entities to submit a detailed proposal without publishing a request for qualifications, it will proceed in accordance with the requirements of this section. Each entity comprising a team that intends to submit a detailed proposal must be prequalified or precertified in accordance with the requirements of this section.

(b) Prequalification.

(1) Audited financial qualification of construction, maintenance, and operations providers. Unless waived under subparagraph (B) of this paragraph, to be eligible to propose on a design-build contract as a provider of construction services, maintenance services, or operations services, a potential proposer must be prequalified in accordance with subparagraph (A) of this paragraph.

(A) Requirements.

(i) To be prequalified to propose, either individually or as a member of the proposers' team, as a provider of construction, maintenance, or operations services on a design-build contract, a private entity must:

(I) submit a completed confidential questionnaire to the department's Construction Division in Austin at any time, but at least 120 days prior to the due date for a response to a request for proposals, in a form prescribed by the department, which shall include certain information concerning the proposer's equipment, experience, and financial condition;

(II) have its certified public accountant submit the audited and other financial information required by the current edition of the department's Bulletin Number 2, titled "Contractor's Financial Resources";

(III) demonstrate it has the financial capacity to complete, operate, and maintain, as applicable, a specific project. Factors that will be considered in assessing a proposer's financial capacity include:

- (-a-) the proposer's current financial strength;
- (-b-) the proposer's credit quality;
- (-c-) any claims, litigation, or equivalent current or pending against the proposer;

(IV) demonstrate, if it will be the prime provider of construction services under a contract, that it is capable of obtaining payment and performance bonds in the amount of \$250 million, or 100% of the construction cost of the project, whichever is less, from a surety rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company, or an alternative form of security in the amount of \$250 million, or 100% of the construction cost of the project, whichever is less, in accordance with §27.3 of this subchapter (relating to General Rules for Private Involvement);

(V) satisfactorily comply with any technical qualification requirements determined by the department to be necessary for a specific project; and

(VI) for the purpose of proposing on federal-aid projects, properly complete the Certification of Eligibility Status form contained in the Confidential Questionnaire.

(ii) The department will make its examination and determination based on the information submitted, and advise the potential proposer of its approved design-build contract capacity. Information adverse to the potential proposer contained in the Certification of Eligibility Status form will be reviewed by the department and the Federal Highway Administration, and may result in the proposer being declared ineligible to submit proposals on federal-aid projects.

(iii) Satisfactory audited financial information and financial capacity will grant a 36-month period of prequalification from the date of the department's determination.

(iv) The department may require current audited information at any time if circumstances develop which are factors that could alter the firm's financial condition, ownership structure, affiliation status, or ability to operate as an on-going concern. The potential

proposer must immediately notify the department in writing of any material changes in its financial condition that occur while the department is conducting its examination.

(v) The department may grant a 90 day grace period of prequalification, for the purpose of preparing and submitting current audited information prior to the expiration of the 90 day period of prequalification.

(B) Waiver.

(i) The department will waive the audited financial qualification requirements of subparagraph (A) of this paragraph if the department's estimate is \$10,000,000 or less unless the executive director or the director's designee determines that audited financial qualification should be required due to:

- (I) safety considerations;
- (II) the complexity of the work; or
- (III) the potential impact of the work on adjacent property owners.

(ii) To be eligible to propose on a design-build contract for which the audited financial qualification requirements have been waived under clause (i) of this subparagraph, a proposer must:

(I) submit a proposer's questionnaire, in a form prescribed by the department, which includes certain information concerning a proposer's equipment and experience;

(II) submit unaudited and other data as required in the instructions to the proposer's questionnaire;

(III) demonstrate it has the financial capacity to complete, operate, and maintain, as applicable, a specific project. Factors that will be considered in assessing a proposer's financial capacity include:

- (-a-) the proposer's current financial strength;
- (-b-) the proposer's credit quality;
- (-c-) any claims, litigation, or equivalent current or pending against the proposer;

(IV) demonstrate, if it will be the prime provider of construction services under a contract, it is capable of obtaining payment and performance bonds from a surety rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company, in an amount that is sufficient to ensure the proper performance of any agreement and protects the department and payment bond beneficiaries supplying labor or materials to the proposer or a subcontractor of the proposer, or an alternative form of security in accordance with §27.3 of this subchapter;

(V) satisfactorily comply with any technical qualification requirements determined by the department to be necessary on a specific project; and

(VI) for a federal-aid project, properly complete the Certification of Eligibility Status form contained in the proposer's questionnaire. Information adverse to the potential proposer contained in the certification will be reviewed by the department and by the Federal Highway Administration, and may result in the proposer being declared ineligible to submit a proposal on a federal-aid project).

(iii) The department will make its examination and determination based on the information submitted, and advise the proposer of its approved design-build contract capacity.

(I) A proposer with no prior experience in construction, maintenance, or operations, or a negative working capital

position (i.e., financial statements indicate that current liabilities exceed current assets), will receive a design-build contract capacity of not less than \$1,000,000.

(II) An experienced proposer with sufficient working capital and financial capability, as determined by the department, will receive a design-build contract capacity of:

(-a-) not less than \$10,000,000 for a proposer submitting compiled financial information if the proposer has at least one year experience in construction, maintenance, or operations and has satisfactorily completed at least two projects in these fields;

(-b-) not less than \$25,000,000 for a proposer submitting compiled financial information if the proposer has at least two years experience in construction, maintenance, or operations and has satisfactorily completed at least four projects in these fields. Those contractors possessing more than two years experience but less than five years experience will be granted at least an additional \$5,000,000 in design-build contract capacity for each additional year of experience in construction, maintenance, or operations; and

(-c-) over \$50,000,000 for a proposer submitting reviewed financial information if the proposer has at least five years of experience in construction, maintenance, or operations and has satisfactorily completed at least four projects in these fields.

(2) Financial statements. For purposes of this section:

(A) An audited financial statement involves an examination of the accounting system, records, and financial statements by an independent certified public accountant in accordance with generally accepted auditing standards. Based on the examination, the auditor expresses an opinion concerning the fairness of the financial statements in conformity with generally accepted accounting principles.

(B) A reviewed financial statement is substantially less in scope than an audited financial statement, and consists primarily of inquiries of proposer personnel and analytical procedures applied to financial data by an independent certified public accountant. Only negative assurance is expressed by the auditor, meaning the auditor is not aware of any material modifications that should be made in order for the financial statements to conform to generally accepted accounting principles.

(C) A compiled financial statement is limited to presenting in the form of financial statements information that is the representation of management. No opinion or any other form of assurance is expressed on the statements by the auditor.

(c) Precertification.

(1) Contract Eligibility. To be eligible to perform work on a design-build contract in the categories approved according to §9.43 of this title (relating to Precertification Requirements), a prime provider and a subprovider must be precertified in accordance with this section unless:

(A) the anticipated work in an individual work category is less than 2.5% of the contract; or

(B) the department has waived the precertification requirements for a contract that is less than \$10,000,000.

(2) Application.

(A) Registered architects, registered professional engineers, registered or licensed professional surveyors, and other technical staff who desire to be precertified by the department to perform engineering, architectural, or surveying work on design-build contracts, shall submit a completed precertification application to the department for review and determination of precertification status.

(B) An application form prescribed by the department may be obtained by contacting the Texas Department of Transportation, Design Division, 125 East 11th Street, Austin, Texas 78701-2483, or through the department's web site.

(C) The application form will request information concerning the experience of the individual.

(D) The precertification web site will include:

(i) a copy of the application form;

(ii) instructions concerning submittal of information for precertification, including format and length restrictions for data to be submitted; and

(iii) the requirements for precertification in each category.

(E) The submittal date for review deadlines as described in paragraph (3) of this subsection shall be the date the precertification application is received by the department.

(F) The precertification of a provider by the department does not guarantee that work will be awarded to that provider.

(3) Deadline. When precertification is required as described in paragraph (1) of this subsection, prime providers and subproviders must be precertified in the technical categories by the due date for responses to a request for proposals to be eligible to submit a response.

(4) Data management. The department will maintain the qualification information submitted in the precertification application by the firm for an employee.

(5) Firm and employee status.

(A) A firm may be precertified in a work category if the firm has a current employee precertified in the category.

(B) A firm employee may be precertified in a work category if the employee possesses the skills and experience to meet the requirements. An employee is not precertified based on the firm's experience.

(C) A precertification will transfer with the employee if the employee leaves the firm.

(D) The department may review a firm's information to evaluate whether the support, equipment, and other resources necessary to do the work are provided to the employee.

(E) A firm with one employee who is precertified in multiple work categories is precertified in those categories. When required, prime providers and subproviders must be precertified in the categories of work they will be performing; however, a provider or subprovider is not required to be precertified in every category of work involved in the contract, unless it will be performing in a lead capacity on all categories of work.

(6) Review process.

(A) An individual, and therefore the firm, will be precertified within 60 days of receipt of complete and accurate information for the submittal, or notified in writing within the same time period that they did not meet the requirements for precertification or that additional submittals will be required for review.

(B) If the submittal is incomplete, a firm will be requested to submit additional information for review. The firm shall submit such information within 30 days of receipt of the department's request for such information. If the information is not provided within

30 days after receipt of the request, the application for precertification will be processed with the information available. The department will make a determination on precertification status within 60 days of receipt of the additional information.

(C) The department will consider the following factors in reviewing the precertification applications:

- (i) current license or registration;
- (ii) personal experience and training; and
- (iii) work category requirements as maintained on the department's web site.

(7) Updates. A firm must report any change in the information included in the original application no later than 45 days after the change occurs.

(8) Appeal. A firm may appeal denial of precertification by submitting additional information to the department within 30 days of receipt of written notification of denial. This information shall justify why the applicant meets the requirements for precertification. The department will review the information and make a determination regarding precertification. A firm may file a written complaint regarding precertification denial with the executive director or his or her designee.

(9) Precertification requirements.

(A) Eligible employees. A firm may be precertified in the technical work categories maintained on the department's web site by providing the listed requirements. A firm may only submit an application for an individual who is employed by that firm at the time of submittal for precertification.

(B) Experience. The experience used to meet requirements may be either prior to or after licensure unless otherwise stated in a specific category. For the purpose of experience for precertification, the employee may be licensed to practice in any state for which that experience is recognized by the:

- (i) Texas Board of Professional Engineers for engineers;
- (ii) Texas Board of Architectural Examiners for architects; or
- (iii) Texas Board of Professional Land Surveying for land surveyors.

(10) Work categories. The approved precertification work category definitions and requirements will be maintained on the department's web site. The commission, by minute order, may add, revise, or delete a work category.

(d) Requests for proposals for design-build contracts.

(1) Requests for proposals. If authorized by the commission, the department will issue a request for proposals from all private entities prequalified in accordance with this section, and the process will proceed in the manner described in §27.4(e) - (l) of this subchapter.

(2) Additional evaluation criteria. In addition to the evaluation criteria set forth in §27.4(e) - (l), design innovation shall also be a criterion in evaluation of proposals submitted in response to a request for proposals for a design-build contract.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bob Jackson

General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8683



43 TAC §27.8

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.203, which provides that the commission shall adopt rules establishing criteria for the prequalification of a private entity to submit a detailed proposal to provide services under a design-build contract, and Transportation Code, §223.209, which provides that the commission shall adopt rules, procedures, and guidelines governing selection of a developer for a comprehensive development agreement and negotiations to promote fairness, obtain private participants in projects, and promote confidence among those participants.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 223, Subchapter E.

§27.8. *Conflict of Interest and Ethics Policies.*

(a) Purpose. This section prescribes ethical standards of conduct applicable to private entities, including consultants and subconsultants, participating in the department's comprehensive development agreement program. A private entity's failure to comply with these standards of conduct may result in the private entity's preclusion from participation in a project or sanctions being imposed under §27.9 of this subchapter (relating to Sanctions).

(b) Gifts and benefits. A proposer, developer, consultant, or subconsultant participating in the comprehensive development agreement program, or an affiliate of any of those entities, may not offer, give, or agree to give a gift or benefit to a member of the commission or to a department employee whose work for the department includes the performance of procurement services relating to a project under this subchapter, or who participates in the administration of a comprehensive development agreement. Notwithstanding this prohibition, a consultant or subconsultant (unless a member of a proposer or developer team, if authorized under subsection (c) of this section) may:

(1) pay for an ordinary business lunch; and

(2) offer, give, or agree to give a token item that does not exceed an estimated value of \$25 (excluding cash, checks, stocks, bonds, or similar items), where the item is distributed generally as a normal means of advertising.

(c) Conflicts of interest.

(1) Purpose. This subsection prescribes department policy on conflicts of interest relating to consultants and subconsultants participating in the comprehensive development agreement program, and thereby:

(A) protects the integrity and fairness of the program and all procurements carried out by the department as part of the program;

(B) avoids circumstances where a consultant, proposer, or developer obtains, or appears to obtain, an unfair competitive advantage as a result of work performed by a consultant or subconsultant;

(C) provides guidance to private entities so they may assess, and make informed business decisions concerning their participation in the program; and

(D) protects the department's interests and confidential and sensitive project-specific and programmatic information.

(2) **Applicability.** This subsection applies to all comprehensive development agreement projects undertaken by the department. This subsection applies to consultants and subconsultants, and to individual employees of consultants and subconsultants who participated in the performance of services for the department. To the extent that the department has previously consented in writing to a consultant's or subconsultant's performance of services that are in conflict with this subsection, participation on a proposer team as an equity owner or team member, acting as a consultant or subconsultant to a proposer, or having a financial interest in a proposer or an equity owner or team member of a proposer, this subsection does not modify or alter the prior consent. The foregoing does not prevent, however, the application of this subsection to the consultant or subconsultant for other projects, including taking into account the performance of services on the project for which consent was obtained. This subsection may by extension prohibit or restrict the ability of a proposer to have a consultant or subconsultant participate on the proposer team as an equity owner or team member, act as a consultant or subconsultant to the proposer, or have a financial interest in the proposer or an equity owner or team member of the proposer.

(3) **Period in which a conflict of interest applies.** If the executive director determines that the performance of services by a consultant or subconsultant raises a conflict of interest, the resulting prohibition or restriction provided in this subsection continues:

(A) for the private entity until one year after the date the performance of services ends; and

(B) for an individual that is an employee of or was employed by the consultant or subconsultant and who participated in the performance of services for the department:

(i) until five years after the date the performance of services ends for those projects for which the individual was materially involved in providing services to the department; and

(ii) until one year from the date the performance of services ends for projects for which the individual was not materially involved in providing services to the department.

(4) **Application to new firm.** If a conflict of interest is determined to apply to an individual pursuant to paragraph (3)(B) of this subsection, the conflict of interest and prohibition with respect to the individual will not apply to the individual's new place of employment. If the new employer is otherwise eligible to perform consultant services, the new employer will remain eligible despite the employment of the individual. This paragraph does not apply to an individual employed by an affiliate of its previous employer, and the conflict of interest and prohibition with respect to the individual will apply to such affiliate.

(5) **Federal requirements.** For federal-aid projects, the department must comply with the Federal Highway Administration's organizational conflict of interest regulations (found in 23 CFR §636.116). The requirements of this subsection do not limit, modify, or otherwise alter the effect of those regulations, and will be applied consistent with those regulations.

(6) **General conflict of interest standards.** Except as provided in paragraph (7) of this subsection, no consultant providing consultant services to the department with respect to a comprehensive development agreement project may be a proposer or participate as an equity owner, team member, consultant, or subconsultant of or to a proposer for that project, or have a financial interest in any of the foregoing entities with respect to that project. Except as provided in paragraphs (8) and (9) of this subsection, a consultant performing consultant services for a comprehensive development agreement project will not be prohibited from participating on a different comprehensive development agreement project as a proposer or participating as an equity owner, team member, consultant, or subconsultant of or to a proposer for the different project, or having a financial interest in any of the foregoing entities with respect to the different project.

(7) **Providing services for the same project.** A consultant that is actively providing preliminary engineering and architectural services to the department with respect to a comprehensive development agreement project, or that performed and completed environmental or traffic and revenue services for a comprehensive development agreement project, may be a proposer or participate as an equity owner, team member, consultant, or subconsultant of or to a proposer for the same project, or have a financial interest in any of the foregoing entities with respect to that project, provided the executive director issues a written determination under paragraph (10) of this subsection that:

(A) the consultant will not, or in the case of the previous performance of consultant services did not, have access to or obtain knowledge of confidential or sensitive information, procedures, policies and processes that could provide an unfair competitive advantage with respect to the procurement for that project;

(B) the data and information provided to the consultant in the performance of the consultant services is either irrelevant to the procurement for that project or is available on an equal and timely basis to all proposers;

(C) the work products from the consultant incorporated into or relevant to the procurement for that project are generally available on an equal and timely basis to all proposers;

(D) with respect to environmental services, a record of decision or finding of no significant impact has been issued for the project; and

(E) with respect to traffic and revenue services, there will be no impact on the project's plan of finance, including the ability to obtain and close funding and potential sources of funding.

(8) **Procurement and financial services.** A consultant actively engaged and performing procurement services or financial services with respect to a comprehensive development agreement project may not be a proposer or participate as an equity owner, team member, consultant, or subconsultant of or to a proposer for that project or any other comprehensive development agreement project, or have a financial interest in any of the foregoing entities with respect to any comprehensive development agreement project.

(9) **Completed services.** A consultant that performed consultant services for a comprehensive development agreement project and completed the services may be a proposer or participate as an equity owner, team member, subconsultant or consultant of or to a proposer on a different comprehensive development agreement project, or have a financial interest in any of the foregoing entities with respect to a different project, provided that the executive director issues a written determination under paragraph (10) of this subsection that the conditions in paragraph (7)(A) - (C) of this subsection have been met.

(10) Requests for determinations or exceptions. A consultant, proposer, or developer may submit a request to the executive director for a determination whether participation in a comprehensive development agreement project or the performance of particular services with respect to a comprehensive development agreement project would constitute a conflict of interest, or to request approval of an exception to the applicability of this subsection to those services. A request for approval of an exception may be made if a consultant, proposer, or developer desires to appeal a previous determination by the executive director that a conflict of interest exists. The executive director will forward a request to the department's Office of General Counsel for analysis and recommendation prior to issuing a decision. In determining whether a conflict of interest exists, or whether to approve an exception, the executive director shall consider:

(A) the extent to which the firm or individual employee obtained access to or the ability to gain knowledge of confidential or sensitive information, procedures, policies, and processes concerning the comprehensive development agreement program or a particular project or procurement that could provide an unfair competitive advantage with respect to the procurement or project at issue;

(B) the type of consulting services at issue;

(C) the particular circumstances of each procurement;

(D) the specialized expertise needed by the department and proposers to implement the procurement;

(E) the past, current, or future working relationship between the consultant and the department;

(F) the period of time between the potential conflict situation and the project at issue; and

(G) the potential impact on the procurement and project at issue, including competition.

(11) Multiple services. If a consultant is providing more than one category of consultant services to the department and there are differences in the standards, restrictions, and limitations applicable to those categories, the standards, restrictions, and limitations applicable to a category that are more stringent will be applied.

(12) Participation on proposer or developer team. A consultant participating with respect to a comprehensive development agreement project as a proposer or developer, or as an equity owner, team member, consultant, or subconsultant of or to a proposer or developer, or having a financial interest in any of the foregoing entities, is eligible to provide consultant services (other than procurement services) to the department for another comprehensive development agreement project, provided that, once the consultant is retained to perform consultant services for the department, the restrictions in this subsection shall apply.

(13) Restriction of services and conditions to approvals and exceptions. In instances where the executive director has issued a written determination under paragraph (10) of this subsection that a conflict of interest does not exist (including, in particular, where the conditions prescribed in paragraphs (7) and (9) of this subsection have been met), or grants an exception to the application of this subsection under paragraph (10), the department may still, in its discretion:

(A) restrict the scope of services the consultant or subconsultant may be eligible to perform for the department in order to further the intent and goals of this subsection; and

(B) condition an approval, determination, or exception as the executive director determines appropriate to further the intent and goals of this subsection, including by requiring the consultant,

subconsultant, proposer, or developer to execute confidentiality agreements, institute ethical walls, or segregate certain personnel from participation in a project or the performance of consultant services.

(14) Provisions are nonexclusive. The provisions in this subsection do not address every situation that may arise in the context of the department's comprehensive development agreement program nor require a particular decision or determination by the executive director when faced with facts similar to those described in this subsection. The department retains the ultimate and sole discretion to determine on a case-by-case basis whether a conflict of interest exists and what actions may be appropriate to avoid, neutralize, or mitigate any actual or potential conflict, or the appearance of any conflict. The provisions of this subsection shall not be construed to preclude or condone any conduct with regard to projects other than projects under a comprehensive development agreement. The department will continue to evaluate other projects based on its traditional conflict of interest standards.

(d) Rules of contact. In order to provide a fair and unbiased procurement process, a request for qualifications, request for proposals, or request for competing proposals and qualifications will contain rules of contact regulating communications between proposers or any of its team members and the commission, the department, and third parties involved in the procurement. Communication includes face-to-face, telephone, facsimile, electronic-mail (e-mail), or formal written communication. The rules of contact become effective upon the issuance of the request for qualifications, request for proposals, or request for competing proposals and qualifications. The rules of contact will include provisions:

(1) prohibiting a proposer or any of its team members from communicating with another proposer or its team members with regard to the project, request for qualifications, request for proposals, or request for competing proposals and qualifications, or either team's qualifications submittal or proposal;

(2) requiring each proposer to designate one or more representatives responsible for contact with the department, and requiring the proposer to correspond with the department regarding the project, request for qualifications, request for proposals, or request for competing proposals and qualifications only through the department's authorized representatives and the proposer's designated representatives;

(3) prohibiting any ex parte communication regarding the project, request for qualifications, request for proposals, or request for competing proposals and qualifications or the procurement with any member of the commission or with any department staff, advisors, contractors, or consultants involved in the procurement until the earliest of the execution and delivery of the comprehensive development agreement, the rejection of all qualifications submittals or proposals by the department, or the cancellation of the procurement;

(4) permitting communications in exceptional circumstances and designating department personnel authorized to approve such communications, and providing that the restrictions on communications shall not preclude or restrict communications with regard to matters unrelated to the request for qualifications, request for proposals, or request for competing proposals and qualifications, or participation in public meetings of the commission or any public or proposer workshop related to the project, request for qualifications, request for proposals, or request for competing proposals and qualifications;

(5) designating a department employee not involved in the procurement to act as an ombudsman who is authorized to receive confidential communications (including questions, comments, or complaints regarding the procurement) and who, after removing, to the ex-

tent practicable, any information identifying the proposer, forwards the communications to the employees designated as the department's authorized representatives; and

(6) authorizing the executive director to disqualify a proposer from the procurement and participation in the project at issue or to impose another sanction under §27.9 of this subchapter if it is determined that a proposer has engaged in any improper communications in violation of the rules of contact.

(e) Exceptions to rules of contact. Notwithstanding subsection (d)(1) of this section:

(1) subcontractors that are shared between two or more proposer teams may communicate with members of each of those teams so long as those proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams; and

(2) the prohibition provided by that subsection does not apply to public discussions regarding the project, request for qualifica-

tions, request for proposals, or request for competing proposals and qualifications at any department sponsored informational meetings.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 2007.

TRD-200701594

Bob Jackson

General Counsel

Texas Department of Transportation

Effective date: June 1, 2007

Proposal publication date: December 1, 2006

For further information, please call: (512) 463-8683

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts (comptroller) proposes to review and consider for readoption, revision, or repeal all sections of Texas Administrative Code, Title 34, Part 1, Chapter 1 (Central Administration), Subchapter A (relating to Practice and Procedure) and Subchapter B (relating to Public Information); Chapter 3 (Tax Administration), Subchapter D (relating to Occupation Tax on Sulphur Products), Subchapter F (relating to Motor Vehicle Sales and Use Tax), Subchapter G (relating to Cigarette Tax), Subchapter H (relating to Cigar and Tobacco Tax), Subchapter I (relating to Miscellaneous Occupation Tax), Subchapter J (relating to Petroleum Products Delivery Fee), Subchapter O (relating to State Sales and Use Tax, §§3.324-3.368), Subchapter T (relating to Manufactured Housing Sales and Use Tax), Subchapter V (relating to Franchise Tax), Subchapter Z (relating to Coastal Protection Fee); and Chapter 19 (State Energy Conservation Office), Subchapter A (relating to General Provisions), Subchapter B (relating to State Facility Energy and Water Management), Subchapter C (relating to Energy and Water Conservation Design Standards), and Subchapter D (relating to Loan Program For Energy Retrofits).

This review and consideration is being conducted in accordance with Government Code, §2001.039. The review will include, at a minimum, whether the reasons for adopting or readopting the rules continue to exist.

The comptroller will accept comments regarding the readoption of these rules for 30 days, beginning with the publication of this notice in the *Texas Register*.

Comments pertaining to this notice to review agency rules under 34 TAC, Part 1, Chapters 1, 3, and 19 may be submitted to Comptroller of Public Accounts, Tax Policy Division-Rule Review, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200701729

Martin Cherry

General Counsel

Comptroller of Public Accounts

Filed: May 2, 2007



Office of the Secretary of State

Title 1, Part 4

The Office of the Secretary of State proposes to review Chapters 71, 72 - 76, 78 - 81, 83, 87, 91, 93, 95 - 97, 101 - 103 and 105, in ac-

cordance with the requirements of the Government Code, §2001.039, which directs state agencies to review and consider for readoption each of their rules every four years. During this review the Office will assess whether the reasons for adopting these chapters continue to exist.

Comments on the proposed review may be submitted in writing by Monday, June 11, 2007. Please address comments to Dan Procter, P.O. Box 13824, Austin, Texas 78711-3824 or e-mail comments to dprocter@sos.state.tx.us.

Chapters:

71. General Policies and Procedures
72. State Seal
73. Statutory Documents
74. Credit Services Organizations
75. Automobile Club
76. Use of a Deceased Individual's Name, Voice, Signature, Photograph, or Likeness
78. Athlete Agents
79. Corporations
80. Unincorporated Business Entities
81. Elections
83. Limited Partnership
87. Notary Public
91. Texas Register
93. Trademarks
95. Uniform Commercial Code
96. Electric Utility Transition Property Notice Filings
97. Business Opportunity
101. Practice and Procedure Before the Office of the Secretary of State
102. Health Spas
103. Membership Camping Resorts
105. Solicitations

TRD-200701590

Jay Dyer

General Counsel

Office of the Secretary of State

Filed: April 26, 2007

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ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Ark-Tex Council of Governments

Request for Proposal for a Provision of a Law Enforcement Training Program

The Ark-Tex Council of Governments (ATCOG) is soliciting proposals for the provision of regional law enforcement training through a grant provided by the Texas Governor's Office, Criminal Justice Division.

The types of training to be provided include: Basic Law Enforcement Officer, Basic Jailer Certification, Basic Tele-Communicators, and Advanced/Specialized Law Enforcement Training. The period of performance is September 1, 2007 through August 31, 2008.

The service delivery area includes the following counties in Texas: Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, and Titus.

Potential respondents may obtain a copy of the request for proposal, scoring guidelines, and project scoring criteria by contacting Patricia Haley, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana, Texas 75505-5307, or call (903) 832-8636. The deadline for proposal submission is June 15, 2007, at 5:00 p.m. The Ark-Tex Council of Governments Regional Criminal Justice Advisory Committee will score multiple proposals received. Respondents will be notified in writing of the date, time, and place of the meeting at which the proposals will be scored.

TRD-200701728

L.D. Williamson

Executive Director

Ark-Tex Council of Governments

Filed: May 2, 2007

Office of the Attorney General

Texas Clean Air Act Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act. Before the State may settle a judicial enforcement action under the Health and Safety Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Harris County, Texas and The State of Texas v. Natural Gas Odorizing, Inc., Cause No. 2007-20873 in the 269th Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendant operated a natural gas odorant manufacturing facility in Harris County. In order to comply with Federal and State law, Mercaptan is added to natural gas to give it a distinctive odor, which helps in leak detection. On January 21, 2005, the Defendant released approximately one pound of mercaptan mixture, resulting in citizen health complaints and constituting a violation of the Texas Clean Air Act. Defendant has ceased manufacturing and

storage operations at this facility and has begun decommissioning and clean-up operations at the site. Defendant denies the allegations and maintains that it acted in a reasonably and prudent manner in containing the release and minimizing offsite impacts.

Proposed Agreed Judgment: The Agreed Final Judgment acknowledges that Defendant has discontinued commercial operations at the facility and has initiated decommissioning and clean-up activities. Defendant has agreed to pay Plaintiffs civil penalties in the amount of \$4,062.50 which will be divided equally between Harris County and the State of Texas. In addition as a Supplemental Environmental Project, Defendant will contribute \$4,062.50 to the Harris County Public Health Ozone Monitoring Network. Defendant will also pay attorney's fees to the State of Texas in the amount of \$750.00, and to Harris County in the amount of \$1,000.00, plus all court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Lisa Sanders Richardson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For more information on this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200701572

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: April 25, 2007

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 20, 2007, through April 26, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on May 2, 2007. The public comment period for these projects will close at 5:00 p.m. on June 1, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: Chambers County Economic Development; Location:

The project is located on Double Bayou, at the Job Beason Park in Oak Island, south of Anahuac, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Beason Park, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 336366; Northing: 3281579. Project Description: The applicant proposes to impact 0.04 acre of jurisdictional wetlands and 1.06 acres of other waters of the U.S. during the construction of 350 feet of marina boat slips and a 2-lane boat ramp. The applicant would remove approximately 1,500 linear feet of dilapidated bulkhead and hydraulically dredge portions of the West Fork of Double Bayou to previously authorized depths of 10 feet. The dredge material would be placed in a levee-contained dredge material placement area constructed on a 2.87-acre upland-located onsite. To compensate for dredge impacts to the 0.04 acre of wetlands, the applicant would develop a 10:1 slope planting platform in the footprint of the removed bulkhead and plant approximately 0.2 acres of smooth cordgrass intertidal marsh. CCC Project No.: 07-0173-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-157 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Carib Transportation, LP; Location: The project is located on a 4-acre tract in the Inner Harbor of the Port of Corpus Christi, at 4301 East Navigation Boulevard, in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Corpus Christi, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 653000; Northing: 3078750. Project Description: The applicant proposes to use mechanical and hydraulic methods to dredge 678 feet of shoreline on the Inner Harbor to a depth of -13 feet mean low tide (MLT) in order to construct a loading facility for river barges. Two monopile breasting structures and two monopile mooring structures would also be constructed for mooring purposes. The loading platform would consist of an 82-foot-wide by 358-foot-long work barge flooded to rest on the channel bottom and permanently moored against the breasting structures. The barge would cover 29,356 square feet of bottom area and displace approximately 15,222 cubic yards of water below the seasonal high tide elevation. The barge would be connected to shore by two 14- by 90-foot concrete approachways. The dredged shoreline would be sloped contoured to a 3:1 slope and protected from erosion by approximately 500 cubic yards of riprap material consisting of rock and/or broken concrete. Approximately 45,869 cubic yards of material would be excavated from below MLT. Dredged material would be placed in Cell B and Cell C of the South Shore Dredge Material Placement Area and stockpiled directly on the project property. No wetlands or seagrasses are reported to be in the project area. CCC Project No.: 07-0174-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-541 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200701706

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council

Filed: May 1, 2007

Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period March 2007, as required by Tax Code, §202.058, is \$53.48 per barrel for the three-month period beginning on December 1, 2006, and ending February 28, 2007. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of March 2007, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period March 2007, as required by Tax Code, §201.059, is \$6.18 per mcf for the three-month period beginning on December 1, 2006, and ending February 28, 2007. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of March 2007, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200701711

Martin Cherry

General Counsel

Comptroller of Public Accounts

Filed: May 1, 2007

Concho Valley Workforce Development Board

Request for Proposal

The Concho Valley Workforce Development Board (CVWDB) is seeking qualified parties to submit proposals for staffing and management of its workforce center (Workforce Solutions), incorporating at a minimum Childcare Services, Workforce Investment Act (WIA) programs, Choices/Temporary Assistance to Needy Families (TANF), Food Stamp Employment and Training (FSE&T) and Reintegration of Offenders (RIO).

Interested parties may obtain a copy of the RFP by sending a request to Cathy Ballard via facsimile (325) 482-8900 or e-mail rfp@cvworkforce.org. Proposals will be accepted until 5:00 p.m. CDST, June 19, 2007, at the office of CVWDB, 36 East Twohig, Suite 805, San Angelo, TX 76903.

A conference will be held on May 18, 2007, at 9:30 a.m. at Workforce Solutions, 202 Henry O. Flipper, San Angelo, TX 76903, Room 103, to answer questions for any party interested in submitting a Proposal. CVWDB reserves the right to accept or reject any or all proposals. The RFP will be released on request beginning May 7, 2007 at 9:00 a.m. CDST.

TRD-200701714

Johnny Griffin
Executive Director
Concho Valley Workforce Development Board
Filed: May 2, 2007

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/07/07 - 05/13/07 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/07/07 - 05/13/07 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 05/01/07 - 05/31/07 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 05/01/07 - 05/31/07 is 18% for Commercial over \$250,000.

¹Credit for personal, family, or household use.

²Credit for business, commercial, investment, or other similar purpose.

³For variable rate commercial transactions only.

TRD-200701707
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 1, 2007

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 11, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO

at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 11, 2007**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Aqua Utilities Inc. dba Aqua Texas, Inc.; DOCKET NUMBER: 2007-0071-MWD-E; IDENTIFIER: RN102341559; LOCATION: Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 Texas Administrative Code (TAC) §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012519001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and the Code, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: \$6,986; ENFORCEMENT COORDINATOR: Heather Brister, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Associated Rack Corporation dba Southwestern Rack; DOCKET NUMBER: 2007-0078-AIR-E; IDENTIFIER: RN100771807; LOCATION: Euless, Tarrant County, Texas; TYPE OF FACILITY: metal platings equipment engineering and manufacturing plant; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health & Safety Code (THSC), §382.085(b) and §382.0518(a), by failing to obtain authorization for sources of air emissions at the plant; PENALTY: \$5,680; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Azim & Ruhee, Inc. dba Salyers Short Stop; DOCKET NUMBER: 2007-0046-PST-E; IDENTIFIER: RN101844140; LOCATION: Clute, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and (B)(ii) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate and by failing to renew a delivery certificate by timely and proper submission of a completed underground storage tank (UST) registration and self-certification form; PENALTY: \$1,155; ENFORCEMENT COORDINATOR: Philip DeFrancesco, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: John Benoit; DOCKET NUMBER: 2007-0277-MLM-E; IDENTIFIER: RN105120737; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the disposal of municipal solid waste (MSW) at an unauthorized site; and 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning; PENALTY: \$12,750; ENFORCEMENT COORDINATOR: Alison Echlin, (512) 239-3308; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: BMB Wood Recycling, Ltd.; DOCKET NUMBER: 2007-0128-AIR-E; IDENTIFIER: RN104408497; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: wood grinding and recycling plant; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent wood dust emissions from pallet grinding operations from migrating onto adjacent property and creating a nuisance condition; PENALTY: \$1,790; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: C. Johnnie-on-the-Spot Portable Toilets, Inc.; DOCKET NUMBER: 2006-0671-SLG-E; IDENTIFIER: RN103163101; LOCATION: Nederland, Jefferson County, Texas; TYPE OF FACILITY: chemical toilet rental and sludge transportation operation; RULE VIOLATED: 30 TAC §312.142(a), by failing to obtain a sludge transporter registration; 30 TAC §312.145, by failing to properly record collection and disposal activities; 30 TAC §312.144(a), by failing to prominently mark the company name on six trucks and to mark the registration number on the waste trucks with numbers at least two inches in height; 30 TAC §312.144(f), by failing to prominently mark discharge valves on the trucks; and 30 TAC §312.146 and the Code, §26.121(a), by failing to prevent the unauthorized discharge of pollutants; PENALTY: \$8,500; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Citgo Refining and Chemicals Company, L.P.; DOCKET NUMBER: 2007-0170-AIR-E; IDENTIFIER: RN102555166; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petroleum and petrochemical processing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Permit Number 5418A, General Conditions, Maximum Allowable Emission Rates, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$5,550; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8) COMPANY: Eastman Chemical Company; DOCKET NUMBER: 2007-0013-AIR-E; IDENTIFIER: RN100219815; LOCATION: Longview, Harrison County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §§113.130, 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §63.167(a)(1), Federal Operating Permit (FOP) O-01974, Special Terms and Conditions Numbers 1A and 6, New Source Review (NSR) Permit 52985, Special Condition Number 10E, and THSC, §382.085(b), by failing to equip open-ended lines with a cap, blind flange, plug, or second valve; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), FOP O-01974, Special Terms and Conditions Number 6, and NSR Permit 52985, Special Condition Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §113.110 and §122.143(4), 40 CFR §63.104(b)(4), FOP O-01974, Special Terms and Conditions Number 1A, and THSC, §382.085(b), by failing to sample at both the entrance and exit of each heat exchange system to detect leaks; and 30 TAC §122.143(4) and §122.145(2)(A), FOP O-01974, General Terms and Conditions, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$33,990; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(9) COMPANY: Hawkins Homes, Inc.; DOCKET NUMBER: 2007-0126-WQ-E; IDENTIFIER: RN104454954; LOCATION: Lumberton, Hardin County, Texas; TYPE OF FACILITY: 8-acre single-family residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; and the Code, §26.121(a), by failing to prevent the unauthorized discharge of sediment into water of the state; PENALTY: \$3,210; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: Jacobs Water Supply Corporation; DOCKET NUMBER: 2007-0202-PWS-E; IDENTIFIER: RN101181428; LOCATION: Rusk County, Texas; TYPE OF FACILITY: public water

supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level for total trihalomethanes; PENALTY: \$805; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(11) COMPANY: City of Kemp; DOCKET NUMBER: 2007-0256-MWD-E; IDENTIFIER: RN102218435; LOCATION: Kemp, Kaufman County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10695001, Effluent Limitations and Monitoring Requirement Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: \$12,530; Supplemental Environmental Project (SEP) offset amount of \$10,024 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")-Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: City of Leonard; DOCKET NUMBER: 2006-2171-MWD-E; IDENTIFIER: RN101919322; LOCATION: Leonard, Fannin County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(17), TPDES Permit Number 10920001, Final Effluent Limitations and Monitoring Requirements 1, Sludge Provisions, and the Code, §26.121(a), by failing to comply with permit effluent limits and by failing to submit monitoring results; PENALTY: \$9,600; Supplemental Environmental Project (SEP) offset amount of \$7,680 applied to having the Respondent connect to the City of Leonard's wastewater collection system one home, owned by a low income homeowner, which has a substandard or failing septic system; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Maxim Production Co., Inc.; DOCKET NUMBER: 2007-0009-AIR-E; IDENTIFIER: RN100893338; LOCATION: Boling, Wharton County, Texas; TYPE OF FACILITY: egg production farm; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization for the poultry incinerator; and the Code, §26.0291 and §205.6 and the Code, §5.702(a), by failing to pay outstanding general wastewater permit fees and all applicable late fees; PENALTY: \$3,960; ENFORCEMENT COORDINATOR: Sherronda Martin, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Mills Road Municipal Utility District; DOCKET NUMBER: 2007-0262-MWD-E; IDENTIFIER: RN102739380; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0011907002, Effluent Limitations and Monitoring Requirement Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limitations; PENALTY: \$2,140; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: John L. Moore; DOCKET NUMBER: 2007-0271-PWS-E; IDENTIFIER: RN103747317; LOCATION: McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.381(b) and the Code, §37.003, by failing to acquire and maintain a license to operate a public water supply; PENALTY: \$270; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: N.B.Wood Recycling and Construction, Ltd.; DOCKET NUMBER: 2007-0346-MSW-E; IDENTIFIER: RN105150999; LOCATION: Garden Ridge, Comal County, Texas; TYPE OF FACILITY: portable wood grinder at a land clearing operation; RULE VIOLATED: 30 TAC §332.8(b)(3) and (4), by failing to equip the grinder with low-velocity fog nozzles or have portable water equipment available during grinding operations; PENALTY: \$500; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: City of Nixon; DOCKET NUMBER: 2007-0373-MWD-E; IDENTIFIER: RN102181781; LOCATION: Nixon, Gonzales County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010234001, Effluent Limitations and Monitoring Requirements Number 1 for Outfall 001A, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: \$1,680; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(18) COMPANY: NJB & Sons, Inc. dba Greenbrier Golf Club; DOCKET NUMBER: 2007-0021-MWD-E; IDENTIFIER: RN101523009; LOCATION: McLennan County, Texas; TYPE OF FACILITY: wastewater system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10888001, Interim Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: \$1,250; Supplemental Environmental Project (SEP) offset amount of \$500 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: Rescar, Inc.; DOCKET NUMBER: 2007-0087-AIR-E; IDENTIFIER: RN100234681; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: railcar repair and painting; RULE VIOLATED: 30 TAC §122.145(2)(A) and (2)(B), FOP Number 1532, Special Condition (SC) 1A, and THSC, §382.085(b), by failing to submit deviation reports; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 18226, SC 9(C) and 9(D)(3), FOP Number 1532, SC 7, and THSC, §382.085(b), by failing to maintain complete records; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 18226, SC 9(D)(1), FOP Number 1532, SC 7, and THSC, §382.085(b), by failing to produce monthly reports of volatile organic compound emissions; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 18226, SC 9(D)(2), FOP Number 1532, SC 7, and THSC, §382.085(b), by failing to maintain monthly reports on the coating lines; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 19342, SC 12(C), FOP Number 1532, SC 7, and THSC, §382.085(b), by failing to maintain documentation and electronic records as specified on each railcar entering the facility; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 19342, SC 7(A) and 7(D), FOP Number 1532, SC 7, and THSC, §382.085(b), by failing to comply with daily monitoring requirements for the carbon absorption unit; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 19342, SC 9, FOP Number 1532, SC 7, and THSC, §382.085(b), by failing to establish and perform a site-wide maintenance and inspection program; and 30 TAC §116.115(c) and §122.143(4), Air Permit Number 19342, SC 12(D), FOP Number 1532, SC 7, and THSC, §382.085(b), by failing to comply with the monthly reporting requirements on railcar cleaning; PENALTY: \$34,000; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: City of Robinson; DOCKET NUMBER: 2006-2170-IWD-E; IDENTIFIER: RN101918605; LOCATION: McLennan County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0003466000 Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted limits for chloride and total suspended solids; and 30 TAC §305.125(1) and TPDES Permit Number WQ0003466000 Monitoring and Reporting Requirements Number 1, by failing to submit discharge monitoring reports; PENALTY: \$4,960; Supplemental Environmental Project (SEP) offset amount of \$3,968 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(21) COMPANY: S & S USA Enterprises, Inc. dba Berry Food Store; DOCKET NUMBER: 2006-1983-PST-E; IDENTIFIER: RN100890979; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(1), (3), (5), and (7)(A) and THSC, §382.085(b), by failing to maintain all required Stage II records on site and make them immediately available for review; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system (VRS); 30 TAC §115.248(1) and THSC, §382.085(b), by failing to make each employee aware of the purposes and correct operation procedures of the Stage II equipment; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system; 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide proper corrosion protection for all USTs; 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection; 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a release detection method capable of detecting a release; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide release detection for the piping associated with the UST system; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures; 30 TAC §334.7(d)(3), by failing to provide written notice of any change or additional information to the commission; 30 TAC §334.8(c)(4)(B) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, TCEQ delivery certificate; PENALTY: \$13,950; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Ezequiel Tapia dba Tapia Dairy 1; DOCKET NUMBER: 2007-0265-WQ-E; IDENTIFIER: RN102078649; LOCATION: Runnels County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: TPDES Permit Number TXG920033 Part III A.8.(c) and the Code, §26.121(a)(1), by failing to prevent the discharge of wastewater into or adjacent to waters in the state; PENALTY: \$2,700; ENFORCEMENT COORDINATOR: Pamela Campbell,

(512) 239-4493; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(23) COMPANY: Texas Petrochemicals LP; DOCKET NUMBER: 2007-0080-IHW-E; IDENTIFIER: RN104964267; LOCATION: Port Neches, Jefferson County, Texas; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §305.64(g), 40 CFR §270.40(b), and THSC, §361.085, by failing to demonstrate compliance with the requirements of 30 TAC Chapter 37, Subchapter P within six months of the date of the change of ownership or operational control of the facility; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: Texas Petrochemicals LP; DOCKET NUMBER: 2007-0365-AIR-E; IDENTIFIER: RN100219526; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), TCEQ Air Permit Number 46307, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$20,000; Supplemental Environmental Project (SEP) offset amount of \$8,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Lan C. Bui dba Tip Top Cleaners; DOCKET NUMBER: 2006-1280-DCL-E; IDENTIFIER: RN104026547; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Amy Martin, (512) 239-2540; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Transcontinental Gas Pipe Line Corporation; DOCKET NUMBER: 2007-0041-AIR-E; IDENTIFIER: RN100211838; LOCATION: Sour Lake, Hardin County, Texas; TYPE OF FACILITY: natural gas transmission plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A)-(C), Permit Number O-00668, Special Terms and Conditions (b)(2), and THSC, §382.085(b), by failing to properly report a deviation and by failing to report the occurrence of that deviation in a semi-annual deviation report; PENALTY: \$2,240; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(27) COMPANY: City of Uvalde; DOCKET NUMBER: 2006-1842-MWD-E; IDENTIFIER: RN103119087; LOCATION: Uvalde County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010306001, Effluent Limitations and Monitoring Requirements Number 1 for Outfalls 001A, 002A, and 003A, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: \$21,125; Supplemental Environmental Project (SEP) offset amount of \$16,900 applied to conduct a city-wide waste tire collection event and illegal tire dump clean up program; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(28) COMPANY: Viridis Energy (Texas), LP; DOCKET NUMBER: 2006-1788-MLM-E; IDENTIFIER: RN102495421; LOCATION: Humble, Harris County, Texas; TYPE OF FACILITY: landfill gas recovery; RULE VIOLATED: 30 TAC §30.201(b), by failing to have at least one properly licensed individual who supervises or manages the

operations at the landfill gas recovery facility; 30 TAC §305.70(j)(21) and §330.121(a) (formerly 30 TAC §330.150(1) incorporating 30 TAC §330.111(a)), by failing to comply with the facility's permit and incorporated plans or other related documents associated with the permit and failure to notify the executive director with modifications to the landfill gas collection system design; 30 TAC §335.69(a)(1)(B) and 40 CFR §265.193(a)(1), by failing to provide adequate secondary containment for a hazardous waste tank; and 30 TAC §335.6(c), by failing to update the facility's notice of registration; PENALTY: \$46,046; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: West Harrison Water Supply Corporation; DOCKET NUMBER: 2007-0062-PWS-E; IDENTIFIER: RN101451532; LOCATION: Hallsville, Harrison County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection; 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps with a total capacity of two gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(D)(v) and THSC, §341.0315(c), by failing to provide emergency power to deliver water at a rate of 0.35 gpm per connection; 30 TAC §290.46(t), by failing to maintain a legible sign at well number two that includes the name of the water supply and an emergency telephone number where a responsible official can be reached; and 30 TAC §290.46(f)(2) and (f)(3)(B)(v), by failing to maintain records regarding the calibration of the flow meter for well number three and to make those records available; PENALTY: \$798; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(30) COMPANY: WTG Gas Processing, L.P.; DOCKET NUMBER: 2007-0093-AIR-E; IDENTIFIER: RN100211754; LOCATION: Howard County, Texas; TYPE OF FACILITY: natural gas gathering and compression station; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 36189/PSD-TX-887, Special Condition 10, and THSC, §382.085(b), by failing to provide results of semi-annual engine testing; and 30 TAC §122.145(2)(B) and THSC, §382.085(b), by failing to submit a timely semi-annual deviation report; PENALTY: \$2,444; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

TRD-200701708

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 1, 2007



Enforcement Orders

A default order was entered regarding Robert (Bobby) Barton McCans, Jr. dba Aaron Irrigation and Landscaping Co., Docket No. 2002-0695-LII-E on April 13, 2007, assessing \$3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, Staff Attorney, at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding South Texas Chlorine, Inc., Docket No. 2004-0142-MLM-E on April 13, 2007, assessing \$5,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney, at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Horace Findley dba Bosque Brazos Valley Water Systems, Inc., Docket No. 2005-0075-PWS-E on April 13, 2007, assessing \$7,921 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deanna Sigman, Staff Attorney, at (512) 239-0619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petrochemicals LP, Docket No. 2005-0257-AIR-E on April 13, 2007, assessing \$157,959 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney, at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Light Business, Inc. dba Farmco 202, Docket No. 2005-1634-PST-E on April 13, 2007, assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney, at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Marti M. Carder dba Pier 57, Docket No. 2005-1683-PWS-E on April 13, 2007, assessing \$1,118 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney, at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rick Lumbley dba Lum's Country Store, Docket No. 2006-0462-PST-E on April 13, 2007, assessing \$2,750 in administrative penalties with \$550 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator, at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jim B. Clemons, Docket No. 2006-0470-OSI-E on April 13, 2007, assessing \$1,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney, at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Price Construction, Ltd., Docket No. 2006-0522-AIR-E on April 13, 2007, assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachael Gaines, Staff Attorney, at (512) 239-0078, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lin Song dba Midcity Cleaners, Docket No. 2006-0707-DCL-E on April 13, 2007, assessing \$420 in administrative penalties with \$84 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator, at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vien T. Le dba Classy Cleaners & Alterations, Docket No. 2006-0728-DCL-E on April 13, 2007, assessing \$1,067 in administrative penalties with \$214 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator, at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Kyo M. Chung dba VIP Cleaner, Docket No. 2006-0768-DCL-E on April 13, 2007, assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney, at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2006-0797-MLM-E on April 13, 2007, assessing \$13,500 in administrative penalties with \$2,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Rhodes, Enforcement Coordinator, at (512) 239-2879, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Alex, Inc. dba Brothers II Cleaners, Docket No. 2006-0908-DCL-E on April 13, 2007, assessing \$955 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Hammer, Staff Attorney, at (512) 239-2496, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Questech Services Corporation, Docket No. 2006-0941-IHW-E on April 13, 2007, assessing \$18,189 in administrative penalties with \$3,637 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator, at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BFI Waste Services of Texas, LP, Docket No. 2006-1029-IHW-E on April 13, 2007, assessing \$1,122 in administrative penalties with \$224 deferred.

Information concerning any aspect of this order may be obtained by contacting Alison Echlin, Enforcement Coordinator, at (512) 239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Conference Association of Seventh-Day Adventists dba The Oaks Adventist Christian School, Docket No. 2006-1063-PWS-E on April 13, 2007, assessing \$1,220 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anita Keese, Enforcement Coordinator, at (956) 430-6034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hidalgo, Docket No. 2006-1073-MWD-E on April 13, 2007, assessing \$25,000 in administrative penalties with \$5,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator, at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Union Carbide Corporation, Docket No. 2006-1080-AIR-E on April 13, 2007, assessing \$10,233 in administrative penalties with \$2,047 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator, at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PD Glycol, Docket No. 2006-1133-AIR-E on April 13, 2007, assessing \$10,575 in administrative penalties with \$2,115 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator, at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Van & Jacqui, Inc. dba 1.35 Cleaners, Docket No. 2006-1173-DCL-E on April 13, 2007, assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator, at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JJ & JM Enterprise, Inc. dba Five Star, Docket No. 2006-1269-DCL-E on April 13, 2007, assessing \$1,067 in administrative penalties with \$214 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator, at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rahim Ali dba Sierra Cleaners, Docket No. 2006-1287-DCL-E on April 13, 2007, assessing \$889 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulamali Bandali dba Afton Oaks Cleaners, Docket No. 2006-1291-DCL-E on April 13, 2007, assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator, at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marina G. Reyes dba Marina's Cleaners, Docket No. 2006-1292-DCL-E on April 13, 2007, assessing \$889 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Alison Echlin, Enforcement Coordinator, at (512) 239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nova Chemicals Inc., Docket No. 2006-1299-IHW-E on April 13, 2007, assessing \$5,814 in administrative penalties with \$1,163 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator, at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kyu Enterprise, Inc. dba K's Cleaners, Docket No. 2006-1350-DCL-E on April 13, 2007, assessing \$889 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator, at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nicolos T. Ponce dba Bryan CS Cleaners, Docket No. 2006-1359-DCL-E on April 13, 2007, assessing \$1,778 in administrative penalties with \$356 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator, at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sultan, Inc. dba Superior Cleaners, Docket No. 2006-1381-DCL-E on April 13, 2007, assessing \$889 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator, at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Edinburg, Docket No. 2006-1413-MLM-E on April 13, 2007, assessing \$10,213 in administrative penalties with \$2,043 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator, at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Food Mart Inc. dba Neighborhood Chevron, Docket No. 2006-1415-PST-E on April 13, 2007, assessing \$1,925 in administrative penalties with \$385 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator, at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Navico Corp dba Dixie Cleaners and dba Hi Tech Cleaners, Docket No. 2006-1424-DCL-E on April 13, 2007, assessing \$2,370 in administrative penalties with \$474 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator, at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gaylord Willett dba Essman Warehouse Complex, Docket No. 2006-1429-PWS-E on April 13, 2007, assessing \$1,188 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator, at (512) 239-2670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zucker Enterprises, Inc. dba Sparkle Cleaners, Docket No. 2006-1461-DCL-E on April 13, 2007, assessing \$2,370 in administrative penalties with \$474 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator, at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of La Ward, Docket No. 2006-1492-MWD-E on April 13, 2007, assessing \$8,680 in administrative penalties with \$1,736 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator, at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monarch Utilities I L.P., Docket No. 2006-1494-PWS-E on April 13, 2007, assessing \$4,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator, at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Michael O. Keiffer and Kristen M. Keiffer dba Candy Cleaners, Docket No. 2006-1503-DCL-E on April 13, 2007, assessing \$889 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator, at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Matthew John Reino dba Lucy's Cleaners, Docket No. 2006-1504-DCL-E on April 13, 2007 assessing \$1,067 in administrative penalties with \$214 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Godeaux, Enforcement Coordinator, at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Invista S.a.r.l., Docket No. 2006-1506-MLM-E on April 13, 2007, assessing \$2,400 in administrative penalties with \$480 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator, at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dale Water Supply Corporation, Docket No. 2006-1508-PWS-E on April 13, 2007, assessing \$2,433 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anita Keese, Enforcement Coordinator, at (956) 430-6034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fuad Azar dba Pik Kwick 1, Docket No. 2006-1516-PST-E on April 13, 2007, assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator, at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Development, Inc. dba Aqua Texas, Inc., Docket No. 2006-1546-MWD-E on April 13, 2007, assessing \$6,080 in administrative penalties with \$1,216 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator, at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lone Star Industries, Inc., Docket No. 2006-1549-AIR-E on April 13, 2007, assessing \$14,544 in administrative penalties with \$2,909 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel La Caille, Enforcement Coordinator, at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bok Hee Kim dba Elite Professional Cleaners, Docket No. 2006-1555-DCL-E on April 13, 2007, assessing \$770 in administrative penalties with \$154 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator, at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sabah Corporation, Inc. dba VIP Cleaners and dba Liberty Cleaners, Docket No. 2006-1557-DCL-E on April 13, 2007, assessing \$3,555 in administrative penalties with \$711 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sharp Investment, Inc. dba Little Buddy 2, Docket No. 2006-1566-PST-E on April 13, 2007, assessing \$6,000 in administrative penalties with \$1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator, at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ann Van Nguyen dba Comet Cleaners, Docket No. 2006-1584-DCL-E on April 13, 2007, assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator, at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Soo Jin Chung dba Livingstone Cleaners, Docket No. 2006-1615-DCL-E on April 13, 2007, assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator, at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kempwood Enterprises, LLC dba Chevron Mini Mart 3, Docket No. 2006-1628-PST-E on April 13, 2007, assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator, at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valet Express Dry Cleaning Services Company, Inc. dba Valet Express, Docket No. 2006-1642-

DCL-E on April 13, 2007, assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator, at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sandy's Cleaners and Alterations, Inc. dba Carol's Tailoring and Alterations, Docket No. 2006-1646-DCL-E on April 13, 2007, assessing \$1,067 in administrative penalties with \$213 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator, at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Barkat Aly dba Reveille Cleaners, Docket No. 2006-1693-DCL-E on April 13, 2007 assessing \$1,067 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator, at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stowaway Bay Property Owners Association, Docket No. 2006-1709-MWD-E on April 13, 2007, assessing \$6,600 in administrative penalties with \$1,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator, at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas H2O, Inc., Docket No. 2006-1711-PWS-E on April 13, 2007, assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator, at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Eagle Pass Water Works System, Docket No. 2006-1712-PWS-E on April 13, 2007, assessing \$6,272 in administrative penalties with \$1,255 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator, at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Buda Economic Development Corporation, Docket No. 2006-1721-WQ-E on April 13, 2007, assessing \$1,600 in administrative penalties with \$320 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator, at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lancaster, Docket No. 2006-1731-PWS-E on April 13, 2007, assessing \$525 in administrative penalties with \$105 deferred.

Information concerning any aspect of this order may be obtained by contacting Amy Martin, Enforcement Coordinator, at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Triad Hospitals, Inc., Docket No. 2006-1758-EAQ-E on April 13, 2007, assessing \$54,000 in administrative penalties with \$10,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator, at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Multiple Concepts, Inc. dba Step N Go Food Store, Docket No. 2006-1782-PST-E on April 13, 2007, assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator, at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jetta Operating Company, Inc., Docket No. 2006-1811-AIR-E on April 13, 2007, assessing \$15,000 in administrative penalties with \$3,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator, at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Imperial Homes Texas, Ltd., Docket No. 2006-1837-WQ-E on April 13, 2007, assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator, at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hugh Howard dba Rio Grande Distributors Inc, Docket No. 2006-1847-PST-E on April 13, 2007, assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator, at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS USA LLC, Docket No. 2006-1893-AIR-E on April 13, 2007, assessing \$4,450 in administrative penalties with \$890 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Terry L. Babb, Sr., Docket No. 2006-2091-PWS-E on April 13, 2007, assessing \$210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator, at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Kimberly F. Miller, Docket No. 2007-0051-PWS-E on April 13, 2007, assessing \$210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator, at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petrochemicals LP, Docket No. 2007-0073-AIR-E on April 13, 2007, assessing \$31,336 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator, at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding George West ISD, Docket No. 2007-0163-PST-E on April 13, 2007, assessing \$1,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator, at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Presidio ISD, Docket No. 2007-0164-PST-E on April 13, 2007, assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator, at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Billy Askins, Docket No. 2007-0165-PWS-E on April 13, 2007, assessing \$210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator, at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Premier Golf Management Inc., Docket No. 2007-0166-PST-E on April 13, 2007, assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator, at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United States Gypsum Company, Docket No. 2006-1773-AIR-E on April 13, 2007, assessing \$18,375 in administrative penalties with \$3,675 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator, at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Manuel Manriquez dba M & A Oil Co., Docket No. 2004-1315-PST-E on April 13, 2007, assessing \$6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney, at (817) 588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200701726

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 2, 2007



Notice of District Petition

Notices Issued April 30, 2007 through May 1, 2007

TCEQ Internal Control No. 03152007-D06; Roman Forest Consolidated Municipal Utility District of Montgomery County has applied to the Texas Commission on Environmental Quality (TCEQ) for authority to adopt and impose an annual uniform operations and maintenance standby fee of \$216 per equivalent single family connection per month for calendar years 2007-2010, on unimproved property within the District. The application was filed pursuant to Chapter 49 of the Texas Water Code, 30 Texas Administrative Code (TAC) Chapter 293, and the procedural rules of the TCEQ. The TCEQ may approve the annual standby fee as requested, or it may approve a lower annual standby fee, but it shall not approve an annual standby fee greater than the amount requested. The standby fee is a personal obligation of the person owning the undeveloped property on January 1 of the year for which the fee is assessed. A person is not relieved of his pro-rated share of the standby fee obligation on transfer of title to the property. On January 1 of each year, a lien is attached to the undeveloped property to secure payment of any standby fee imposed and the interest or penalty, if any, on the fee. The lien has the same priority as a lien for taxes of the District. The purpose of standby fees is to distribute a fair portion of the cost burden for operations and maintenance costs of the District facilities to owners of property who have not constructed vertical improvements but have water, wastewater, or drainage facilities or services available. Any revenues collected from the operations and maintenance standby fees shall be used to supplement the District's operations and maintenance account.

TCEQ Internal Control No. 10312006-D01; Double J Investments, L.P.; Easy Kyle Partners, L.P.; RSP Partners Development, L.P.; Lester Wayne Westberg, Barbara M. Swenson, and Jack R. Swenson (Petitioners) filed a petition for the creation of Siena Municipal Utility District No. 1 of Williamson County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 TAC Chapter 293; and the procedural rules of the TCEQ. The petition was filed with the county clerk of Williamson County, pursuant to 30 TAC §293.11(d). The petition states the following: (1) the Petitioners hold title to land within the proposed District and are owners of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 549.02 acres located in Williamson County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Round Rock, Texas. By Resolution No. R-06-10-26-13G1, effective October 26, 2006, the City of Round Rock, Texas, gave its consent to the creation of the proposed District, pursuant to the Texas Water Code, §54.016. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project; and from the information available at the time, the cost of the project is estimated to be approximately \$85,910,000.

TCEQ Internal Control No. 10312006-D02; Double J Investments, L.P. and Easy Kyle Partners, L.P. (Petitioners) filed a petition for the creation of Siena Municipal Utility District No. 2 of Williamson County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 TAC Chapter 293; and the procedural rules of the TCEQ. The petition was filed with the county clerk of Williamson County, pursuant to 30 TAC §293.11(d). The petition states the following: (1) the Petitioners hold title to land within the proposed District and are owners of a majority in value of the land to be included in the proposed District; (2) there are three lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 310.915 acres located

in Williamson County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Round Rock, Texas. By separate affidavits, the three lien holders, David Lynn Oman, Richard Liardon, and Betty Carol Finn, have consented to the creation of the proposed District. By Resolution No. R-06-10-26-13G1, effective October 26, 2006, the City of Round Rock, Texas, gave its consent to the creation of the proposed District, pursuant to the Texas Water Code, §54.016. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project; and from the information available at the time, the cost of the project is estimated to be approximately \$45,070,000.

TCEQ Internal Control No. 02222007-D04; Timberleaf Properties, LP (the Petitioner) filed a petition for creation of Liberty County Municipal Utility District No. 2 (the District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 TAC Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 618.14 acres located in Liberty County, Texas; and (3) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas. The Petitioner by separate affidavit indicates that there is one lien holder, Capital Farm Credit FLCA, on the property to be included in the proposed District. The Petitioner has provided the TCEQ with a certificate evidencing the lien holder's consent to the creation of the proposed District. By Resolution No. 2007-60, effective January 23, 2007, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project; and from the information available at the time, the cost of the project is estimated to be approximately \$21,341,745.

TCEQ Internal Control No. 02212007-D02; Timberleaf Properties, LP (the Petitioner) filed a petition for creation of Liberty County Municipal Utility District No. 3 (the District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 TAC Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 736.96 acres located in Liberty County, Texas; and (3) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas. The Petitioner by separate affidavit, indicates that there is one lien holder, Capital Farm Credit FLCA, on the property to be included in the proposed District. The Petitioner has provided the TCEQ with a certificate evidencing the lien holder's consent to the creation of the proposed District. By Resolution No. 2007-61, effective January 23, 2007, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project; and from the information available at the time, the cost of the project is estimated to be approximately \$29,207,402.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way

not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to TCEQ, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200701725

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 2, 2007



Notice of Public Meeting

Notice of public meeting on Thursday June 14, 2007 at 7:00 p.m. at the Cain Civic Center, 915 South Palestine, Athens, Texas concerning the Harvey Industries proposed state Superfund site.

The purpose of the meeting is to obtain public input and information concerning the intent to take no further action at the site and to delete the site from the state Superfund registry.

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this public notice of intent to take no further action at the Harvey Industries proposed state Superfund site (the site) and to delete the site from its proposed-for-listing status on the state Superfund registry. The state registry is the list of state Superfund sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The commission is proposing this deletion because the ED has determined that due to removal actions that have been performed the site no longer presents such an endangerment. This combined notice was also published in the *Athens Daily Review* on May 11, 2007.

The site was proposed for listing on the state Superfund registry in the May 9, 1995, issue of the *Texas Register* (20 TexReg 3506). The site, including all land, structures, appurtenances, and other improvements, is located at the southeast corner of the intersection of Farm Road 2495 and Texas 31 in Athens, Henderson County, Texas. The site also includes any areas where hazardous substances had come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

The site was developed as a television cabinet and circuit board manufacturing facility in 1955. In 1973 a landfill was permitted for the facility in the location of a former clay mining pit. The landfill reportedly received sawdust, wood, cardboard, general refuse, paint sludge and other industrial solid wastes. A hazardous waste incinerator and a fire training area were also located on the site separate from the landfill. The waste incinerator and fire training areas, including associated

groundwater impacts, were remediated by previous owners or operators of the site prior to the site being proposed to the state registry of superfund sites. The hazard ranking system documentation prepared for the site in 1994 identified potential hazards associated with the landfill and potential hazards associated with approximately 300 drums and containers of paint wastes and spent solvents located in various structures on the site. The drums and containers of waste were removed by a third party under an agreement with the state which provided for cleanup of the on-site buildings and warehouses in exchange for the right to lease the warehouses.

From 1996 through 1998 the state conducted a remedial investigation of the site which determined that no hazardous substances exceeding protective concentrations were located within the landfill or soil at the site. However, the investigation determined that arsenic, beryllium, lead and nickel slightly exceeded protective concentrations in shallow groundwater at the site. A 2001 draft proposal to address groundwater contamination by natural attenuation was withdrawn by the state when the protective concentration for arsenic was revised by a change in federal regulations.

Additional site investigations conducted from 2002 through 2005 determined that landfill gas (methane) generated by the decomposition of solid waste in the landfill at the site could have presented a future hazard to occupants of the nearby on-site buildings and could have affected the groundwater chemistry to allow the mobilization of contaminants in groundwater. Therefore, in 2006, a landfill gas venting system was installed to prevent buildup and further migration of landfill gas and to improve groundwater geochemistry.

Ongoing groundwater monitoring conducted since 2001 has demonstrated that no hazardous constituents associated with the site remain in groundwater at levels that present a risk to human health or the environment. It is believed that natural attenuation and changes in geochemistry associated with the landfill gas venting system will prevent future occurrences of hazardous substances above protective concentrations in the groundwater associated with the site. In one very isolated area outside the boundaries of the facility, shallow groundwater impacted by cadmium exceeds protective levels. However, this contamination is not attributable to the site and therefore is not being addressed as part of the site.

In accordance with 30 TAC §335.5(a), notice will be recorded in the county deed records in Henderson County that an industrial solid waste landfill remains on the site. The TCEQ will conduct long-term operations and maintenance (O&M) activities to ensure continued function and integrity of the industrial solid waste landfill cover, the landfill gas venting system, a perimeter fence around the landfill and groundwater monitoring wells. O&M activities will include groundwater monitoring to ensure that no future releases are associated with the solid waste in the landfill remaining on site.

As a result of the removal actions that have been performed at the site, the ED has determined that the site no longer presents an imminent and substantial endangerment to public health and safety or the environment. Therefore, no further action other than continued O&M activities is necessary at the site and the site is eligible for deletion from the state registry of Superfund sites as provided by 30 TAC §335.344(c).

The commission will hold a public meeting to receive comment on the proposed deletion of the site and the determination to take no further action beyond continued O&M activities. This public meeting is not a contested case hearing under Texas Government Code, Chapter 2001. The public meeting is scheduled for 7:00 p.m. on Thursday June 14, 2007 at the Cain Civic Center, 915 South Palestine, Athens, Texas.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting

must be received by 5:00 p.m. on June 13, 2007, and should be sent in writing to Alan Etheredge, Project Manager, TCEQ, Remediation Division, MC 143, P.O. Box 13087, Austin, Texas 78711-3087 or by facsimile (512) 239-2450. The public comment period for this action will end at the close of the public meeting on June 14, 2007.

A portion of the record for this site, including documents pertinent to the proposed deletion of the site, is available for review during regular business hours at the Henderson County Library, 121 S. Prairieville Street, Athens, Texas, (903) 677-7295. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-5674. Requests should be made as far in advance as possible.

For further information regarding this meeting, please call John Flores, TCEQ Community Relations, at (800) 633-9363.

TRD-200701710

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 1, 2007



Notice of the Executive Director's Response to Public Comments and Explanation of Changes

This general permit is proposed under the authority found in Texas Water Code (TWC), §26.040. General Permit Number TXG340000 would renew authorization for surface discharges of facility wastewater, contact storm water, and storm water associated with industrial activities from petroleum bulk stations and terminals (PBSTs) into or adjacent to water in the state.

Prior to issuing a general permit, the Executive Director (ED) of the Texas Commission on Environmental Quality (commission or TCEQ) must comply with TWC, §26.040(d) and 30 Texas Administrative Code (TAC) §205.3(c). Both provisions require the ED to respond to all timely public comments that raise "relevant and material" or "significant" issues. The ED must make these responses publicly available and must file them with the commission's Chief Clerk at least ten days before the TCEQ considers whether to approve the general permit. Accordingly, the ED now files this response to comments (Response) to address concerns raised by the public with regard to a proposed general permit under the Texas Pollutant Discharge Elimination System (TPDES). In certain instances, the general permit was revised in response to comments received.

The Executive Director's Response to Comments.

The Office of Chief Clerk received a timely letter from the Texas Oil and Gas Association (TxOGA). These public comments have prompted changes in the proposed general permit.

Comments and Responses

Comment No. 1: TxOGA requests that all references to Standard Industrial Classification (SIC) Code 5171 be deleted in the draft permit. TxOGA continues by stating that the original United States Environmental Protection Agency general permit issued in 1984 did not include

SIC Code 5171 and that it was incorrectly inserted into the permit by the TCEQ in the renewal. TxOGA believes that, by referencing SIC Code 5171, the permit limits the applicability of the permit and inadvertently excludes petroleum storage and transfer facilities that do not operate under this SIC code.

Response No. 1: The ED agrees that the reference of SIC Code 5171 may limit the applicability of the permit and exclude facilities that do not operate under this SIC code. Therefore, the reference to SIC Code 5171 located on the cover page of the draft permit, included in the definition of Storm Water Associated with Industrial Activities, and located in Part II. Section A. Discharges Covered were removed from the permit. The draft permit was renoticed in the *Texas Register* on May 19, 2006 (31 TexReg 4258) and was republished in the *Houston Chronicle* on May 15, 2006. The public notice for the 1999 issuance of TXG340000 (63 FR 41848) states that the listing of petroleum bulk stations and terminals is not intended to be exhaustive and that other types of entities not listed could also be regulated.

Comment No. 2: TxOGA commented that it appears that the TCEQ used the same monitoring parameters for lead and methyl tertiary butyl ether (MTBE) as found in TPDES General Permit TXG830000 for Petroleum Fuel and Petroleum Substances Discharges (remediation systems). TxOGA stated there are significant differences in the discharges from remediation systems and those from PBSTs. Remediation system discharges are continuous, while discharges from PBSTs are intermittent. Also, remediation systems commonly have carbon or air stripper treatment prior to discharge, while PBSTs do not. Due to these differences, TxOGA states that General Permit TXG340000 should not contain the same limitations for lead and MTBE as General Permit TXG830000.

TxOGA further commented that the lead limits should remain as they are in the existing permit, 0.25 milligrams per liter (mg/L) and that the MTBE limit should be "report only" to allow the industry to collect data to demonstrate potential compliance or noncompliance with the proposed 0.24 mg/L MTBE limit. The report only requirement would give the facilities time to install controls if needed to meet the newly imposed MTBE limit.

Response No. 2: The addition of MTBE in this permit draft and the lower lead limits are based on an antidegradation review of TPDES General Permit TXG830000 by the TCEQ's Water Quality Standards Team. The team recommended a daily maximum limitation of 0.10 mg/L for total lead, except for counties in the Cypress, Sabine, and Neches River Basins. Due to the hardness value (which is used in the calculation of water quality limits) of the receiving streams in these basins, the recommended daily maximum limitation is 0.02 mg/L. The limitations for total lead were calculated using acute criteria which are based on intermittent low volume discharges and, therefore, are applicable to the intermittent discharges expected from PBSTs.

The team also recommended a 0.24 mg/L MTBE effluent limit to protect human health and to meet the criteria for drinking water taste and odor. The more sensitive criteria of 0.015 mg/L for taste and odor was allowed a 12 to 1 dilution as would be expected with the allowable effluent fraction which represents the critical mixing zone for water bodies large enough to constitute a drinking water supply as described in the *The Procedures to Implement the Texas Surface Water Quality Standards* (RG-194 (Revised)), dated January 2003.

Because of the nature of the discharge from General Permit TXG340000, which is similar in nature to the discharge allowed by TXG830000, and the similarity in the constituents of concern expected to be found in both discharges, the limitation for MTBE was added to the draft permit and the lead limitation was revised. Based on the addition of these limitations, the Water Quality Standards Team's

review of draft General Permit TXG340000, states that "where permit requirements and storm water pollution prevention plans are properly implemented no significant degradation is expected and existing uses will be maintained and protected."

To address the comment that remediation systems commonly have carbon and/or air stripper treatment in place, a three-year compliance period, as allowed by 30 TAC §307.2(f), has been included for existing facilities to comply with the previously mentioned limitations for total lead and MTBE. The interim effluent limit for total lead will be 0.25 mg/L, the limitation in the existing permit. A report only requirement for MTBE will be required during the compliance period. An existing facility will be defined in the permit as a facility that was in operation prior to the issuance of this permit renewal.

TRD-200701709

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 1, 2007

Texas Public Finance Authority

Notice of Hearing - Cosmos Foundation, Inc. Education Revenue Bonds, Series 2007A

Notice is hereby given of a public hearing to be held on behalf of the Texas Public Finance Authority Charter School Finance Corporation on Friday, May 25, 2007, at 9:00 a.m. in the Conference Room, Suite 411 at the Texas Public Finance Authority, William P. Clements State Office Building, 300 W. 15th St, Austin, Texas, 78701 with respect to the captioned bonds (the "Bonds") to be issued in a principal amount not to exceed \$30,000,000 by the Texas Public Finance Authority Charter School Finance Corporation. The proceeds of the Bonds will be loaned to Cosmos Foundation, Inc., a Texas non-profit corporation (the "School") for the following purposes: (a) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at 9421 West Sam Houston Parkway, Houston, Texas 77099; (b) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, all located at 11995 Forestgate Drive, Dallas, Texas 75243; (c) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, including an approximately 20,000 square foot new school building, all located at 2031 South Texas Avenue, Bryan, Texas 77802; (d) financing and reimbursing certain costs for the construction, renovation and/or equipment of educational facilities, including an approximately 35,000 square foot new school building, all located at the northeast corner of Cable Ranch Road and Lakeside Parkway, San Antonio, Texas; (e) renovating leased facilities on its campus located at 1900 North Valley Mills Drive, Waco, Texas 76710; (f) renovating leased facilities on its campus located at 5402 4th Street, Lubbock, Texas 79416; (g) renovating leased facilities on its campus located at 13415 West Belfort, Sugar Land, Texas 77478; (h) renovating leased facilities on its campus located at 4055 Calder Avenue, Beaumont, Texas 77706; (i) funding a debt service reserve fund or the purchase of a Reserve Fund Surety Policy and capitalized interest; and (j) paying a portion of the costs of issuance of the Bonds. The initial and exclusive operator of the project and the educational facilities is and will be the School.

The public hearing will be conducted by Judith Porras, General Counsel of the Texas Public Finance Authority, or her designee (the "Hearing Officer"). All interested persons are invited to attend such public hearing to express their views with respect to the above-described project and the Bonds. Questions or requests for additional information may

be directed to the Hearing Officer (telephone: (512) 463-5681). Any interested persons unable to attend the hearing may submit their views in writing to the Hearing Officer prior to the date scheduled for the hearing. This notice is published and the hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

TRD-200701730
Kimberly Edwards
Executive Director
Texas Public Finance Authority
Filed: May 2, 2007

Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Amendment Number 763, Transmittal Number 07-004, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. This amendment will revise the section of the state plan that addresses the Reimbursement Rates for State Veterans Homes under the Nursing Facility Reimbursement Methodology. The proposed amendment will be effective September 1, 2007.

The proposed amendment will update references from the legacy Department of Human Services to the current Department of Aging and Disability Services and will eliminate language requiring Veterans Administration (VA) per diem payments to the State of Texas Veterans Land Board for nursing home care to be offset against per diem payment rates for Medicaid-eligible residents. HHSC is making these changes to increase understanding and ease administration of the state plan and to bring Texas into compliance with §202 of the Veterans Health Programs Improvement Act of 2004 (Public Law No. 108-422), which clarified that per diem payments made by the VA for care of veterans in State veterans homes should not be used to offset or reduce other payments made to assist veterans.

If approved, the amendment is expected to result in annual aggregate increased costs of approximately \$3,224,638 for federal Fiscal Year 2008, of which approximately \$1,952,518 is federal funds and \$1,272,120 is state general revenue. For federal Fiscal Year 2009, estimated increased costs are approximately \$3,215,828, of which approximately \$1,930,783 is federal funds and \$1,285,045 is state general revenue.

To obtain additional information or copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200 or by telephone at (512) 491-1373. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200701595
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: April 27, 2007

Public Notice

The Texas Health and Human Services Commission (HHSC) published a public notice regarding the Texas Disease Management Program 1915(b) waiver (number TX-17) in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2399). The notice incorrectly stated that HHSC had received approval from the Centers for Medicare and Medicaid Services to renew the Texas Disease Management Program 1915(b) waiver (number TX-17) to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The correct notice should be as follows:

The Texas Health and Human Services Commission (HHSC) announces its intent to submit the State's application for a renewal of the Texas Disease Management Program 1915(b) waiver (number TX-17) to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The current waiver period is scheduled to expire on August 7, 2007; however, at the request of the Centers for Medicare and Medicaid Services to bring the waiver timeframe in line with the federal fiscal quarters, HHSC is requesting that the current waiver expire June 30, 2007, and that the waiver renewal be approved for a two-year period beginning July 1, 2007.

The waiver renewal provides for the continuation of the disease management program, which HHSC developed pursuant to the requirements of H.B. 727, 78th Legislature, Regular Session, 2003. The disease management program works in conjunction with current Medicaid services provided to Primary Care Case Management and fee-for-service clients. The program is designed to be an educational and care management service for individuals who receive services through the Texas Medicaid Program and who have one or more of the following conditions: Congestive Heart Failure, Asthma, Diabetes, Chronic Obstructive Pulmonary Disease, and Coronary Artery Disease. This waiver renewal maintains cost neutrality for each year in the two-year renewal period covering 2007 through 2009.

To obtain copies of the proposed waiver renewal, interested parties may contact Carmen Capetillo by mail at Health and Human Services Commission, P.O. Box 85200, H-620, Austin, Texas 78708-5200; by telephone at (512) 491-1128; by facsimile at (512) 491-1953; or by e-mail at carmen.capetillo@hhsc.state.tx.us.

TRD-200701719
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: May 2, 2007

Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Dallas	Texas Heart Center PA	L06067	Dallas	00	04/06/07
Throughout Tx	KC Engineering	L06061	Marble Falls	00	04/10/07

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Abilene	ARMC LP DBA Abilene Regional Medical Center	L02434	Abilene	78	04/05/07
Abilene	Abilene Imaging Center LLC	L05687	Abilene	07	04/02/07
Allen	Presbyterian Medical Center DBA Presbyterian Hospital of Allen	L05765	Allen	05	03/30/07
Amarillo	Cardiology Center of Amarillo LLP	L05736	Amarillo	06	04/10/07
Amarillo	Cardinal Health	L03398	Amarillo	37	03/30/07
Austin	Asuragen Inc	L05977	Austin	04	04/06/07
Austin	Daughters of Charity Health Services of Austin DBA Seton Healthcare Network	L02896	Austin	94	04/04/07
Austin	St Davids Healthcare Partnership LP LLP DBA North Austin Medical Ctr	L04910	Austin	69	03/30/07
Austin	ARA Imaging	L05862	Austin	18	03/29/07
Austin	North Austin Surgery Center LP	L05832	Austin	01	03/30/07
Beaumont	Exxonmobil Oil Corporation	L00603	Beaumont	77	03/29/07
Bedford	Columbia North Hills Outpatient Imaging Center Subsidiary LP DBA North Hills Outpatient Imaging Center	L03455	Bedford	42	04/04/07
Bridgeport	BASC Management LLC DBA Bridgeport Ambulatory Surgical Center	L05734	Bridgeport	02	03/30/07
Carrollton	Alpha Energy Laboratories Inc	L02814	Carrollton	16	04/02/07
Channelview	TAPCO International Inc DBA Tapco Enpro International	L04990	Channelview	23	04/11/07
Corpus Christi	Riverside Hospital Inc DBA Northwest Regional Hospital	L02977	Corpus Christi	41	04/06/07
Corpus Christi	Samuel Duro Oloyo MD DBA South Texas Medical Associates	L05881	Corpus Christi	01	04/04/07
Corpus Christi	Radiology & Imaging of South Texas LLP DBA Alameda Imaging Center	L05182	Corpus Christi	17	04/05/07
Corsicana	Guardian Industries Corporation	L05213	Corsicana	03	04/03/07
Cypress	North Cypress Medical Center Operating Co LLC DBA North Cypress Medical Center	L06020	Cypress	02	04/04/07
Denton	Tanveer A Qureshi MD PA DBA The Heart Center of North Texas	L04815	Denton	07	04/05/07
Fort Worth	Fort Worth Medical Plaza Inc DBA Columbia Plaza Medical Center of Fort Worth	L02171	Fort Worth	50	04/04/07
Fort Worth	Dallas Cardiology Associates PA DBA Heartplace Huguley	L05883	Fort Worth	02	03/30/07
Freeport	Rhodia Electronics and Catalysis Inc	L02807	Freeport	33	04/02/07
Frisco	Frisco Medical Center LLP DBA Medical Center at Frisco	L06036	Frisco	01	03/29/07
Garland	E+ PET Imaging XII LP DBA Pet Imaging of Garland	L05875	Garland	03	03/30/07

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amendment #	Date of Action
Grand Prairie	Richemont North America Inc	L05047	Grand Prairie	06	03/26/07
Houston	American Diagnostic Tech LLC	L05514	Houston	38	03/30/07
Houston	Nuclear Imaging Services	L05775	Houston	29	03/30/07
Houston	Baker Hughes Oilfield Operation Inc DBA Baker Atlas	L05104	Houston	10	03/30/07
Houston	Nuclear Imaging Services	L05775	Houston	30	04/04/07
Houston	Hall Garcia Cardiology Associates	L05431	Houston	03	04/02/07
Houston	East Texas Cardiology PA	L06058	Houston	01	04/02/07
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	125	04/03/07
Houston	Caltex Holdings LP	L01793	Houston	29	04/05/07
Houston	Valco Instruments Company Inc	L01572	Houston	22	04/09/07
Houston	Westhollow Technology Center	L02116	Houston	45	04/03/07
Houston	Baker Hughes Oilfield Operations Inc DBA Baker Atlas Houston Technology Center	L04452	Houston	44	04/04/07
Houston	Memorial Hermann Hospital System Inc DBA Memorial Hermann Hospital	L00650	Houston	82	03/30/07
Houston	Cambridge Heart Center PA	L05623	Houston	04	04/02/07
Houston	Proportional Technologies Inc	L04747	Houston	20	04/11/07
Irving	Baylor Medical Center at Irving DBA Irving Healthcare System	L02444	Irving	66	03/29/07
Lubbock	Radiation Oncology of the South Plains PA DBA Lubbock Imaging Center	L05418	Lubbock	09	04/04/07
Lubbock	Grace Clinic of Lubbock DBA Grace Clinic	L06040	Lubbock	01	04/02/07
Mansfield	FTI Industries Inc	L02810	Mansfield	14	03/31/07
McAllen	Columbia Rio Grande Regional Hospital	L03288	McAllen	46	04/04/07
Mount Pleasant	DX Imaging LTD DBA Open Imaging of Mount Pleasant	L05445	Mount Pleasant	09	04/02/07
New Braunfels	Cemex USA	L02809	New Braunfels	27	04/09/07
Odessa	Huntsman Polymers Corporation	L00547	Odessa	42	04/10/07
Plano	North Texas Regional Cancer Center	L05357	Plano	09	04/09/07
San Angelo	Shannon Clinic	L04216	San Angelo	38	03/29/07
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	228	04/03/07
San Antonio	Jeremy Nyle Wiersig MD PA DBA Concord Imaging	L05915	San Antonio	02	04/04/07
San Antonio	Southwest Foundation for Biomedical Research	L00468	San Antonio	49	03/27/07
Texarkana	Red River Pharmacy Services	L05077	Texarkana	18	03/29/07
The Woodlands	Lexicon Genetics Incorporated	L04932	The Woodlands	15	04/05/07
Throughout Tx	Team Industrial Services Inc	L00087	Alvin	162	04/10/07
Throughout Tx	Texas Department of Transportation	L00197	Austin	127	04/06/07
Throughout Tx	Ramming Paving Co LTD	L04666	Austin	06	04/09/07
Throughout Tx	Grant Works Inc	L05380	Austin	06	04/03/07
Throughout Tx	Texas Department of State Health Services	L05865	Austin	02	04/09/07
Throughout Tx	NDE Solutions LLC	L05879	Bryan	09	04/09/07
Throughout Tx	NDE Solutions	L05879	Bryan	08	03/29/07
Throughout Tx	PCI Services A Division of RNA Inc	L04596	Corpus Christi	09	04/11/07
Throughout Tx	Savage-Tolk Corporation	L02672	Earth	21	04/02/07
Throughout Tx	Licon Engineering Company Inc	L05530	El Paso	05	04/10/07
Throughout Tx	H&H X-Ray Services	L02516	Flint	60	04/10/07
Throughout Tx	Gray Wireline Service Inc	L03541	Fort Worth	21	03/29/07
Throughout Tx	General Inspection Services Inc	L02319	Hempstead	40	04/05/07
Throughout Tx	Wood Group Logging Services Inc	L05262	Houston	21	04/05/07
Throughout Tx	OSCS Inc	L05813	Keene	05	04/11/07

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	E I Dupont De Nemours & Company	L00314	La Porte	83	04/10/07
Throughout Tx	Non Destructive Inspection	L02712	Lake Jackson	132	04/02/07
Throughout Tx	Hi-Tech Testing Service	L05021	Longview	63	04/06/07
Throughout Tx	GEOCO Inc	L05146	Midland	10	04/09/07
Throughout Tx	Precision Energy Services Inc	L04405	Midland	17	04/05/07
Throughout Tx	Western Anatec Inc	L04865	Nederland	69	04/09/07
Throughout Tx	Big State X-Ray	L02693	Odessa	61	04/09/07
Throughout Tx	Desert Industrial X-Ray LP	L04590	Odessa	61	04/05/07
Throughout Tx	T C Inspection Inc	L05833	Oyster Creek	22	04/09/07
Throughout Tx	Turner Industries Group LLC DBA Pipe Fabrication Division Texas Operations	L05237	Paris	14	04/10/07
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	23	03/30/07
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	122	04/05/07
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	24	04/10/07
Throughout Tx	Arias & Associates Inc	L04964	San Antonio	26	04/10/07
Throughout Tx	Schlumberger Technology Corporation	L01833	Sugar Land	139	04/11/07
Throughout Tx	Schlumberger Technology Corporation	L01833	Sugar Land	138	04/05/07
Throughout Tx	Apex Geoscience Inc	L04929	Tyler	28	04/03/07
Tomball	Tomball Hospital Authority DBA Tomball Regional Hospital	L02514	Tomball	44	04/05/07
Tomball	Tomball Hospital Authority DBA Tomball Regional Hospital	L02514	Tomball	43	04/04/07
Tyler	The University of Texas Health Center at Tyler	L04117	Tyler	38	04/09/07
Waco	Texas State Technical College Waco	L01926	Waco	36	04/03/07
Waco	Baylor University	L00343	Waco	21	04/04/07

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Fredericksburg	Hill Country Memorial Hospital DBA Hill Country Memorial	L03516	Fredericksburg	31	04/06/07
Houston	Compete Cardiac Care	L05218	Houston	08	04/06/07
Houston	Institute of Biosciences and Technology	L04681	Houston	27	04/06/07
Odessa	Odessa Regional Hospital LP DBA Odessa Regional Hospital	L04885	Odessa	09	04/06/07
Richardson	Raytheon Company	L04096	Richardson	26	03/29/07
San Antonio	The University of Texas Health Science Center at San Antonio	L05217	San Antonio	09	04/03/07
Throughout Tx	Protechnics	L03835	Houston	50	04/10/07
Throughout Tx	PLPS Inc	L04955	Houston	06	03/23/07

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Carrollton	Apex Inspections Inc	L05563	Carrollton	07	03/29/07
Fort Worth	Fort Worth Surgery Center	L05848	Fort Worth	01	04/04/07
Rockdale	Alcoa Power Plant Sandow Station	L04386	Rockdale	15	04/09/07
Throughout Tx	Year Inc DBA PSI-Paltec	L05851	Graham City	02	04/11/07
Throughout Tx	Superior Energy Services LLC	L05540	Longview	09	04/09/07
Waco	Baylor University	L00400	Waco	27	04/04/07

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200701713
Cathy Campbell
General Counsel
Department of State Health Services
Filed: May 2, 2007



Notice of Emergency Cease and Desist Order on Primary Health Physicians, P.A., dba Carenow

Notice is hereby given that the Department of State Health Services (department) ordered Primary Health Physicians, P.A., Carenow (registrant-R25388-002) of Grapevine to cease and desist using the Summit x-ray unit until the entrance exposure radiation levels are within regulatory limits.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200701712
Cathy Campbell
General Counsel
Department of State Health Services
Filed: May 2, 2007



Texas Department of Insurance

Notice of Re-Opened Call for Issues Related to the 2006 Biennial Hearing

Texas Insurance Code §§2703.201 et seq. requires the Department of Insurance to hold a biennial hearing to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as may be requested by any association, title insurance company, title insurance agent, or member of the public, or as the Commissioner may determine necessary to consider. Notice of the hearing will appear in the *Texas Register* at a later date. A Notice of Call was originally issued April 26, 2006 and published in the May 5, 2006, issue of the *Texas Register* (31 TexReg 3739). This Notice of Re-Opened Call is issued to receive additional proposals from any association, title insurance company, title insurance agent, or member of the public so that notice of the matters to be considered at the biennial hearing can be provided pursuant to the requirements of §§2703.203, 2703.204, 2703.205, 2703.207 and 2703.208. Any association, title insurance company, title insurance agent, or member of the public requesting that a matter or subject, in addition to the rates for title insurance, and in addition to matters previously submitted in response to the

Notice of Call issued April 26, 2006, be considered must provide a detailed description of the matter or proposal no later than June 11, 2007. You need not re-submit proposals already submitted in response to the original Call for Issues unless those proposals should be modified or amended.

All requests should be addressed to the Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104 (please refer to reference number T-0406-08-1). Requests should be submitted in both hard copy and in digital format.

TRD-200701600
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 27, 2007



Texas Lottery Commission

Instant Game Number 807 "Lucky Numbers"

1.0 Name and Style of Game.

A. The name of Instant Game No. 807 is "LUCKY NUMBERS". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 807 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 807.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 2 CLUB SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$250, \$2,500 and \$25,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 807 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
2 CLUB SYMBOL	DBL
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$250	TWO FTY
\$2,500	25 HUND
\$25,000	25 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 807 - 1.2E

CODE	PRIZE
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00 or \$250.

I. High-Tier Prize - A prize of \$2,500 or \$25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (807), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 807-0000001-001.

L. Pack - A pack of "LUCKY NUMBERS" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY NUMBERS" Instant Game No. 807 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A

prize winner in the "LUCKY NUMBERS" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either LUCKY NUMBER play symbol, the player wins the PRIZE shown for that number. If a player reveals a 2 club play symbol, the player wins DOUBLE the PRIZE shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

- Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
- The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- The ticket must not be counterfeit in whole or in part;
- The ticket must have been issued by the Texas Lottery in an authorized manner;
- The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
- The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
- The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. No three or more identical non-winning prize symbols on a ticket.

D. No duplicate LUCKY NUMBERS play symbols on a ticket.

E. There will be no correlation between the matching symbols and the prize amount.

F. The "2 CLUB" (doubler) play symbol will only appear on winning tickets as dictated by the prize structure.

G. The \$2,500 and \$25,000 prize symbols will both appear on all tickets unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY NUMBERS" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$250, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00 or \$250 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and

instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY NUMBERS" Instant Game prize of \$2,500 or \$25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY NUMBERS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "LUCKY NUMBERS" Instant Game, the Texas Lottery shall deliver to an adult

member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "LUCKY NUMBERS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 807. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 807 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	892,080	7.94
\$4	495,600	14.29
\$5	84,960	83.33
\$10	84,960	83.33
\$20	42,480	166.67
\$50	31,270	226.42
\$250	5,546	1,276.60
\$2,500	44	160,909.09
\$25,000	10	708,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.33. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 807 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 807, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200701691

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 30, 2007

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Instant Game Number 809 "Big Bang Bucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 809 is "BIG BANG BUCKS". The play style for this game is "Row/column/diagonal"

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 809 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 809.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are:

FIRECRACKER SYMBOL, X SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200 AND \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 809 - 1.2D

PLAY SYMBOL	CAPTION
FIRECRACKER SYMBOL	
X SYMBOL	
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 809 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number

is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$200.

I. High-Tier Prize - A prize of \$1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine

(9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (809), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 809-0000001-001.

L. Pack - A pack of "BIG BANG BUCKS" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BIG BANG BUCKS" Instant Game No. 809 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BIG BANG BUCKS" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) Play Symbols. If a player reveals 3 (three) firecracker play symbols in any one row, column or diagonal, the player wins the PRIZE shown in PRIZE BOX. No portion of the display printing or any extraneous matter whatsoever shall be usable or playable as part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 10 (ten) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 10 (ten) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ticket will contain three X play symbols in a row, column or diagonal.

C. Every ticket will contain at least four firecracker play symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "BIG BANG BUCKS" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the

Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BIG BANG BUCKS" Instant Game prize of \$1,000 the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BIG BANG BUCKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BIG BANG BUCKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BIG BANG BUCKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 809. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 809 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,478,400	6.82
\$2	336,000	30.00
\$4	134,400	75.00
\$5	100,800	100.00
\$10	84,000	120.00
\$20	67,200	150.00
\$50	3,780	2,666.67
\$100	1,470	6,857.14
\$200	840	12,000.00
\$1,000	168	60,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.57. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 809 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 809, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200701692
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 30, 2007



Instant Game Number 810 "\$50,000 Big Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 810 is "\$50,000 BIG MONEY". The play style for GAME 1 is "match 3". The play style for GAME 2 is "key number match". The play style for GAME 3 is "key symbol match". The play style for GAME 4 is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 810 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 810.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$1,000, \$5,000, \$50,000, MONEY BAG SYMBOL, SAFE SYMBOL, STACK OF COINS SYMBOL, STACK OF BILLS SYMBOL, TREASURE CHEST SYMBOL, ROLL OF BILLS SYMBOL, GOLD BAR SYMBOL, GOLD NUGGET SYMBOL, WALLET SYMBOL, PIGGY BANK SYMBOL, LEMON SYMBOL, CROWN SYMBOL, HORSESHOE SYMBOL, SHAMROCK SYMBOL, POT OF GOLD SYMBOL, BELL SYMBOL, 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 10X SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 810 - 1.2D

PLAY SYMBOL	CAPTION
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTEEN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUN
\$500	FIV HUN
\$1,000	ONE THOU
\$5,000	FIV THOU
\$50,000	50 THOU
MONEY BAG SYMBOL	MNYBAG
SAFE SYMBOL	SAFE
STACK OF COINS SYMBOL	COINS
STACK OF BILLS	BILLS
TREASURE CHEST SYMBOL	TRSURE
ROLL OF BILLS SYMBOL	ROLL
GOLD BAR SYMBOL	GOLD
GOLD NUGGET SYMBOL	NUGGET
WALLET SYMBOL	WALLET
PIGGY BANK SYMBOL	PGYBNK
LEMON SYMBOL	LEMON
CROWN SYMBOL	CROWN
HORSESHOE SYMBOL	HRSHOE
SHAMROCK SYMBOL	SHMRCK
POT OF GOLD SYMBOL	GOLD
GOLD BAR SYMBOL	BAR
BELL SYMBOL	BELL
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FON
15	FTN
16	SXT
17	SVT
18	EGN
19	NTN
20	TWY

21	TNE
22	TTW
23	TTH
24	TFR
25	TFV
26	TSX
27	TSV
28	TEI
29	TNI
30	THY
10X	WINX10

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 810 - 1.2E

CODE	PRIZE
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

I. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (810), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 810-0000001-001.

L. Pack - A pack of "\$50,000 BIG MONEY" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$50,000 BIG MONEY" Instant Game No. 810 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$50,000 BIG MONEY" Instant Game is determined once the latex on the ticket is scratched off to expose 65 (sixty-five) Play Symbols. For GAME 1, if a player reveals (3) three MONEY BAG play symbols in any one row, column or diagonal, the player wins the PRIZE shown. For GAME 2, if the player matches any of YOUR AMOUNTS play symbols to the LUCKY AMOUNT play symbol, the player wins that amount. For GAME 3, if a player reveals (3) three matching play symbols in any one PULL, the player wins the PRIZE shown for that PULL. For GAME 4, if the player matches any of YOUR NUMBERS play symbols to either of the WINNING NUMBER play symbols, the player wins the PRIZE for that number. If the player reveals a 10X play symbol, the player wins 10 (ten) times the PRIZE shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 65 (sixty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
 3. Each of the Play Symbols must be present in its entirety and be fully legible;
 4. Each of the Play Symbols must be printed in black ink except for dual image games;
 5. The ticket shall be intact;
 6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
 8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
 9. The ticket must not be counterfeit in whole or in part;
 10. The ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
 13. The ticket must be complete and not miscut, and have exactly 65 (sixty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
 14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
 15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
 16. Each of the 65 (sixty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the 65 (sixty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another un-

played ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets within a book will not have identical patterns.
- B. GAME 1: Each ticket will contain four (4) or five (5) "Money Bag" symbols.
- C. GAME 1: No ticket will contain three or more identical symbols, except the "Money Bag" symbol.
- D. GAME 1: Tickets can only win once in this play area.
- E. GAME 1: Winning tickets will have three (3) "Money Bag" symbols in a single row, column or diagonal.
- F. GAME 1: Winning tickets will contain only one (1) winning combination.
- G. GAME 1: Non-winning tickets will not contain four (4) "Money Bag" symbols in all four corners.
- H. GAME 2: This play area consists of four (4) YOUR AMOUNTS and one (1) LUCKY AMOUNT.
- I. GAME 2: Players can win up to four (4) times in this play area.
- J. GAME 2: On non-winning tickets, all YOUR AMOUNTS will be unique.
- K. GAME 3: The Play area consists of eighteen (18) play symbols and six (6) prize symbols.
- L. GAME 3: The play symbols will be used randomly over the eighteen (18) play positions and across all tickets, with the exception of winning tickets, which will require positions to repeat. This restriction is with respect to other restrictions.
- M. GAME 3: There will never be three (3) consecutive identical symbols in a vertical or diagonal line within PULLS 1 to 3 or PULLS 4 to 6.
- N. GAME 3: No prize amount will appear more than two (2) times in this play area except as required on multiple win tickets.
- O. GAME 3: Non-winning tickets will never contain more than three (3) of the same play symbols over the entire play area.
- P. GAME 3: Consecutive non-winning tickets within a book will not have identical PULLS. For instance if the first ticket contains CROWN, POT OF GOLD, and LEMON in any PULL then the next ticket may not contain CROWN, POT OF GOLD, and LEMON in any row in any order.
- Q. GAME 3: Non-winning tickets will not have identical games. For example if PULL 1 is CROWN, POT OF GOLD, and LEMON then PULL 2 through 6 will not contain CROWN, POT OF GOLD, and LEMON in any order.
- R. GAME 3: Winning tickets will contain three (3) matching Play Symbols in a PULL.
- S. GAME 3: Players can win up to six (6) times in this play area.
- T. GAME 3: On winning tickets, non-winning games will have different prize amounts from the winning prize amounts in this play area.
- U. GAME 4: This play area consists of twelve (12) YOUR NUMBERS and two (2) WINNING NUMBERS.
- V. GAME 4: Players can win twelve (12) times in this play area.

W. GAME 4: Non-winning PRIZE symbols will not match a winning PRIZE symbol on a ticket.

X. GAME 4: Both winning and non-winning tickets will not contain more than two (2) matching PRIZE symbols except on multiple wins.

Y. GAME 4: No duplicate non-winning YOUR NUMBERS on a ticket.

Z. GAME 4: YOUR NUMBERS will never equal the corresponding PRIZE symbol.

AA. GAME 4: All WINNING NUMBERS will be unique.

BB. GAME 4: The "10X" play symbol will win ten (10) times the PRIZE shown instantly and will appear as per the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$50,000 BIG MONEY" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$50,000 BIG MONEY" Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$50,000 BIG MONEY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$50,000 BIG MONEY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$50,000 BIG MONEY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 810. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 810 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	640,000	9.38
\$10	720,000	8.33
\$15	240,000	25.00
\$20	80,000	75.00
\$50	67,500	88.89
\$100	7,500	800.00
\$500	250	24,000.00
\$1,000	127	47,244.09
\$5,000	14	428,571.43
\$50,000	7	857,142.86

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.42. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 810 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 810, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200701715

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: May 2, 2007



Instant Game Number 833 "\$130 Million Payout Bonanza"

1.0 Name and Style of Game.

A. The name of Instant Game No. 833 is "\$130 MILLION PAYOUT BONANZA". The play style for Game 1 is "key symbol match with auto win". The play style for Game 2 is "beat score with tripler". The play style for Game 3 is "match 3 of 6 with doubler". The play style for Game 4 is "3 in a line with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 833 shall be \$50.00 per ticket.

1.2 Definitions in Instant Game No. 833.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, DOLLAR BILL SYMBOL, 3 SYMBOL, 2X SYMBOL, \$50.00, \$70.00, \$100, \$200, \$500, \$1,000, \$2,000, \$5,000, \$1 MILL SYMBOL, \$5 MILL SYMBOL, STAR SYMBOL, MOON SYMBOL, 5 TIMES SYMBOL or 1 TIMES SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 833 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
DOLLAR BILL SYMBOL	WINALL
3 SYMBOL	TPL
2X	DOUBLE
\$50.00	FIFTY
\$70.00	SEVENTY
\$100	ONE HUND
\$200	TWO HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$2,000	TWO THOU
\$5,000	FIV THOU
\$1 MILL	ONE MILL
\$5 MILL	FIV MILL
STAR SYMBOL	
MOON SYMBOL	
5 TIMES SYMBOL	PRIZE
1 TIMES SYMBOL	PRIZE

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Mid-Tier Prize - A prize of \$50.00, \$70.00, \$100, \$200, \$300 or \$500.

G. High-Tier Prize - A prize of \$1,000, \$2,000, \$20,000, \$50,000, \$1,000,000 or \$5,000,000.

H. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

I. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (833), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 020 within each pack. The format will be: 833-0000001-001.

J. Pack - A pack of "\$130 MILLION PAYOUT BONANZA" Instant Game tickets contains 20 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 020 will both be exposed.

K. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

L. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$130 MILLION PAYOUT BONANZA" Instant Game No. 833 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$130 MILLION PAYOUT BONANZA" Instant Game is determined once the latex on the ticket is scratched off to expose 53 (fifty-three) play symbols. In Game 1, if a player matches any of YOUR NUMBERS play symbols to either of the WINNING NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a "dollar bill" play symbol, the player wins ALL 10 PRIZES IN THIS GAME INSTANTLY. In Game 2, if a player's YOUR number play symbol beats THEIR number play symbol within the same game, the player wins PRIZE shown for that game. If a player reveals a "3" play symbol, the player wins TRIPLE the prize shown for that game. In Game 3, if a player reveals 3 matching play symbol amounts, the player wins that amount. If a player reveals 2 matching play symbol amounts and a "2X" play symbol, the player wins DOUBLE that amount. In Game 4, if a player reveals 3 "star" play symbols in any one row, column or diagonal, the player wins prize in PRIZE box. A player must scratch the BONUS box for a chance to win 5 TIMES the prize won. No portion of the display printing or any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 53 (fifty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;
 2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
 3. Each of the Play Symbols must be present in its entirety and be fully legible;
 4. Each of the Play Symbols must be printed in black ink except for dual image games;
 5. The ticket shall be intact;
 6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
 8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
 9. The ticket must not be counterfeit in whole or in part;
 10. The ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
 13. The ticket must be complete and not miscut, and have exactly 53 (fifty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
 14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
 15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
 16. Each of the 53 (fifty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
 17. Each of the 53 (fifty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's

discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The \$1 MILL and \$5 MILL prize symbols will always appear on non-winning tickets and will each appear on \$50,000 and lower winning tickets when prize structure permits.

C. Game 1: No duplicate WINNING NUMBERS play symbols.

D. Game 1: No duplicate non-winning YOUR NUMBERS play symbols.

E. Game 1: When the "dollar bill" symbol (win all) appears, no YOUR NUMBERS play symbol will match a WINNING NUMBERS play symbol.

F. Game 1: No duplicate non-winning prize symbols in this game.

G. Game 1: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

H. Game 2: No duplicate non-winning games.

I. Game 2: No more than 3 duplicate YOUR number play symbols or THEIR number play symbols.

J. Game 2: No duplicate non-winning prize symbols.

K. Game 2: Non-winning prize symbols will never be the same as the winning prize symbol(s).

L. Game 2: The "3" symbol (tripler) will appear only as dictated by the prize structure.

M. Game 2: When the "3" symbol (tripler) appears, the THEIR number play symbol in that game will always be "4" or higher.

N. Game 3: No four or more matching play symbols.

O. Game 3: No three matching play symbols on games where the "2X" symbol (doubler) appears.

P. Game 3: No three or four pairs.

Q. Game 4: Only the STAR play symbol will appear 3 times in a row, column or diagonal.

R. Game 4: There will be a minimum of 4 STAR play symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$130 MILLION PAYOUT BONANZA" Instant Game prize of \$50.00, \$70.00, \$100, \$200, \$300 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$70.00, \$100, \$200, \$300 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim

any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$130 MILLION PAYOUT BONANZA" Instant Game prize of \$1,000, \$2,000, \$20,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "\$130 MILLION PAYOUT BONANZA" top level prize of \$1,000,000 or \$5,000,000, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "\$130 MILLION PAYOUT BONANZA" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$130 MILLION PAYOUT BONANZA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$130 MILLION PAYOUT BONANZA" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing,

distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,600,000 tickets in the Instant Game No. 833. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 833 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$50	540,000	6.67
\$70	495,000	7.27
\$100	180,000	20.00
\$200	58,890	61.13
\$300	9,600	375.00
\$500	12,000	300.00
\$1,000	4,200	857.14
\$2,000	1,500	2,400.00
\$20,000	50	72,000.00
\$50,000	20	180,000.00
\$1,000,000	6	600,000.00
\$5,000,000	3	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.77. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 833 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 833, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200701693

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 30, 2007

Stella Garcia
President
Lower Rio Grande Valley Workforce Development Board
Filed: April 30, 2007

Lower Rio Grande Valley Workforce Development Board

Lease Proposals East Hidalgo County

The Lower Rio Grande Valley Workforce Development Board (Board) dba WorkFORCE Solutions (WFS), is a non-profit, tax exempt organization, overseeing workforce development programs and services in Hidalgo, Starr and Willacy Counties. The Board receives Workforce Investment Act (WIA), Temporary Assistance for Needy Families (TANF) / Choices, Food Stamp Employment and Training, and Child Care Development funds, among others. These federal funds pass through the Texas Workforce Commission to the Board.

It is the intent of WorkFORCE Solutions to accept a Lease Proposal to locate a new "Workforce Center" that will house the various offices necessary to provide three primary methods of delivering services; self-service, one-on-one and group training. This Center is to be located in East Hidalgo County, Texas.

Detailed information is included in the Request for Proposals which will be available on April 23, 2007 at 10:00 a.m. The RFP may be obtained in person at the WorkFORCE Solutions' Administration Office located at 3406 W. Alberta, Edinburg, Texas 78539, by calling (956) 928-5000 or by downloading it from the website at: www.wf-solutions.com. This RFP provides sufficient information for interested parties to prepare and submit a proposal for consideration by Lessee.

There will be a "Pre-Proposal" Conference on May 2, 2007 at 2:00 p.m. at the WorkFORCE Solutions Administrative offices located at 3406 West Alberta Road Edinburg, TX 78539. At this meeting, respondents will have an opportunity to ask any questions regarding this RFP. Following the "Pre-Proposal" meeting, any and all questions shall be submitted in writing and no later than May 9, 2007 at 2:00 p.m. A written response will be posted to the WFS website as well as made available to all vendors of record.

Lessee will accept proposals at the WorkFORCE Solutions' Administration Office until: May 23, 2007, 4:00 p.m. Any questions or concerns regarding this Request for Proposals shall be directed to:

Rolando Garcia, AIA, Project Manager

Broaddus & Associates

3243 N. 38th Street

McAllen, TX 78501

Phone (956) 688-2307

Fax (956) 688-2315

Email - rgarcia@broaddusassociates.com

Any responses received after the deadline will not be considered.

WorkFORCE Solutions is an Equal Opportunity Employer and ADA accessible. Auxiliary aids will be provided upon request. Historically Underutilized Businesses are encouraged to participate in all WorkFORCE Solutions' procurement actions. Telephone access is available through TDD-1 (800) RELAY TX, VOICE - 1 (800) RELAY VV. Local TTY number is (956) 928-9320.

TRD-200701703

Lease Proposals Starr County

The Lower Rio Grande Valley Workforce Development Board (Board) dba WorkFORCE Solutions (WFS), is a non-profit, tax exempt organization, overseeing workforce development programs and services in Hidalgo, Starr and Willacy Counties. The Board receives Workforce Investment Act (WIA), Temporary Assistance for Needy Families (TANF) / Choices, Food Stamp Employment and Training, and Child Care Development funds, among others. These federal funds pass through the Texas Workforce Commission to the Board.

It is the intent of WorkFORCE Solutions to accept a Lease Proposal to locate a new "Workforce Center" that will house the various offices necessary to provide three primary methods of delivering services; self-service, one-on-one and group training. This Center is to be located in Starr County, Texas.

Detailed information is included in the Request for Proposals which will be available on April 23, 2007 at 10:00 a.m. The RFP may be obtained in person at the WorkFORCE Solutions' Administration Office located at 3406 W. Alberta, Edinburg, Texas 78539, by calling (956) 928-5000 or by downloading it from the website at: www.wf-solutions.com. This RFP provides sufficient information for interested parties to prepare and submit a proposal for consideration by Lessee.

There will be a "Pre-Proposal" Conference on May 2, 2007 at 10:00 A.M. at the WorkFORCE Solutions Administrative offices located at 3406 West Alberta Road Edinburg, TX 78539. At this meeting, respondents will have an opportunity to ask any questions regarding this RFP. Following the "Pre-Proposal" meeting, any and all questions shall be submitted in writing and no later than May 9, 2007 at 2:00 p.m. A written response will be posted to the WFS website as well as made available to all vendors of record.

Lessee will accept proposals at the WorkFORCE Solutions' Administration Office until: May 23, 2007, 4:00 p.m. Any questions or concerns regarding this Request for Proposals shall be directed to:

Rolando Garcia, AIA, Project Manager

Broaddus & Associates 3243 N. 38th Street

McAllen, TX 78501

Phone (956) 688-2307

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Email: rgarcia@broaddusassociates.com

Any responses received after the deadline will not be considered.

WorkFORCE Solutions is an Equal Opportunity Employer and ADA accessible. Auxiliary aids will be provided upon request. Historically Underutilized Businesses are encouraged to participate in all WorkFORCE Solutions' procurement actions. Telephone access is available through TDD-1 (800) RELAY TX, VOICE - 1 (800) RELAY VV. Local TTY number is (956) 928-9320.

TRD-200701701

Stella Garcia

President

Lower Rio Grande Valley Workforce Development Board

Filed: April 30, 2007

◆ ◆ ◆
Lease Proposals West Hidalgo County

The Lower Rio Grande Valley Workforce Development Board (Board) dba WorkFORCE Solutions (WFS), is a non-profit, tax exempt organization, overseeing workforce development programs and services in Hidalgo, Starr and Willacy Counties. The Board receives Workforce Investment Act (WIA), Temporary Assistance for Needy Families (TANF) / Choices, Food Stamp Employment and Training, and Child Care Development funds, among others. These federal funds pass through the Texas Workforce Commission to the Board.

It is the intent of WorkFORCE Solutions to accept a Lease Proposal to locate a new "Workforce Center" that will house the various offices necessary to provide three primary methods of delivering services; self-service, one-on-one and group training. This Center is to be located in Western Hidalgo County, Texas.

Detailed information is included in the Request for Proposals which will be available on April 23, 2007 at 10:00 a.m. The RFP may be obtained in person at the WorkFORCE Solutions' Administration Office located at 3406 W. Alberta, Edinburg, Texas 78539, by calling (956) 928-5000 or by downloading it from the website at: www.wf-solutions.com. This RFP provides sufficient information for interested parties to prepare and submit a proposal for consideration by Lessee.

There will be a "Pre-Proposal" Conference on May 2, 2007 at 2:00 p.m. at the WorkFORCE Solutions Administrative offices located at 3406 West Alberta Road Edinburg, TX 78539. At this meeting, respondents will have an opportunity to ask any questions regarding this RFP. Following the "Pre-Proposal" meeting, any and all questions shall be submitted in writing and no later than May 9, 2007 at 2:00 p.m. A written response will be posted to the WFS website as well as made available to all vendors of record.

Lessee will accept proposals at the WorkFORCE Solutions' Administration Office until: May 23, 2007, 4:00 p.m. Any questions or concerns regarding this Request for Proposals shall be directed to:

Rolando Garcia, AIA, Project Manager

Broadus & Associates

3243 N. 38th Street

McAllen, TX 78501

Phone (956) 688-2307

Fax (956) 688-2315

Email - rgarcia@broadusassociates.com

Any responses received after the deadline will not be considered.

WorkFORCE Solutions is an Equal Opportunity Employer and ADA accessible. Auxiliary aids will be provided upon request. Historically Underutilized Businesses are encouraged to participate in all WorkFORCE Solutions' procurement actions. Telephone access is available through TDD-1 (800) RELAY TX, VOICE - 1 (800) RELAY VV. Local TTY number is (956) 928-9320.

TRD-200701704

Stella Garcia

President

Lower Rio Grande Valley Workforce Development Board

Filed: April 30, 2007

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Request for Proposals Training Vendors/Consultants

The Lower Rio Grande Valley Workforce Development Board dba WorkFORCE Solutions is a non-profit, tax exempt organization, overseeing workforce development programs and services in Hidalgo, Starr and Willacy Counties. The Board is allocated funds from the Child Care Development Fund, Workforce Investment Act (WIA), Temporary Assistance for Needy Families (TANF)/Choices, and Food Stamp Employment and Training, among others. These federal funds pass through the Texas Workforce Commission to the Board.

Workforce Solutions is in a transformation process whereby the Board of Directors, staff, and contractors are seeking resources to support organizational development (OD). Workforce Solutions considers the Board, staff, and contractors an organization-wide system of necessary functions and services to achieve its purpose of Leading Change, Connecting People to Opportunities, and Improving Potential. Workforce Solutions is seeking training vendors/consultants to assist the continuous development of the organization in areas such as leadership, continuous improvement, communications, team building, coaching, problem solving, facilitation, and other necessary skills required to achieve our desired state as a dynamic organization of inspired and empowered professionals focused on new dimensions of services and solutions for our customers.

Detailed information for the services solicited will be available in the Request for Proposals (RFP), which will be available on Monday, April 30, 2007, at 10:00 a.m. CST. Contact for the RFP is Robert Barbosa, Procurement Coordinator, at (956) 928-5000. The RFP may be obtained in person at the WorkFORCE Solutions' administration office located at 3406 West Alberta, Edinburg, Texas 78539.

The 1st round of proposals are due on or before 4:00 p.m. CST, May 30, 2007, at WorkFORCE Solutions' administration office. Any responses received after the deadline will be considered during the 2nd round of this procurement (see schedule, page one).

WorkFORCE Solutions is an Equal Opportunity Employer and ADA accessible. Auxiliary aids will be provided upon request. Historically Underutilized Businesses are encouraged to participate in all WorkFORCE Solutions' procurement actions. Telephone access is available through TDD-1 (800) RELAY TX, VOICE - 1 (800) RELAY VV.

TRD-200701702

Stella Garcia

President

Lower Rio Grande Valley Workforce Development Board

Filed: April 30, 2007

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Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 25, 2007, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of NTS Telephone Company, LLC, doing business as NTS of Levelland, for a State-Issued Certificate of Franchise Authority, Project Number 34203 before the Public Utility Commission of Texas.

Applicant intends to provide cable and video service. The requested CFA service area includes the municipal boundaries of the City of Levelland, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin,

Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34203.

TRD-200701697

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 30, 2007



Correction of Error

(Editor's Note: The Public Utility Commission of Texas filed a "Notice of Filing for Approval of the Provision of Non-Emergency 311 Service" in the April 27, 2007, issue of the Texas Register (32 TexReg 2412). In the last paragraph the comment deadline was incorrectly stated as May 14, 2007. The comment deadline is May 28, 2007. The notice is being republished in its entirety.)

Notice of Filing for Approval of the Provision of Non-Emergency 311 Service

Notice is given to the public of the filing, on March 26, 2007, with the Public Utility Commission of Texas (commission) of an application for Administrative Approval to Provide Non-Emergency 311 Service for Webb County.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P., doing business as AT&T Texas, for Administrative Approval to Provide Non-Emergency 311 Service for Webb County; Docket Number 34054.

The Application: Notice is given to the public of the filing with the Commission of an administrative filing by AT&T Texas for approval of the provision of Non-Emergency 311 Service, pursuant to P.U.C. Substantive Rule §26.127 and AT&T's Texas' existing General Exchange Tariff, Section 47.

As a certified telecommunications utility (CTU), AT&T Texas seeks approval on behalf of Webb County to provide Non-Emergency 311 (NE311) service to its residents within the legally-defined county limits of Webb County, Texas. NE311 is available to local government entities to provide to their residents an easy to-remember number to call for access to non-emergency services. By implementing NE311 service, communities can improve 911 response times for those callers with true emergencies. Each local government entity that elects to implement 311 will determine the types of non-emergency calls that will be handled by their 311 call center.

Persons who wish to comment on this administrative filing should notify the Public Utility Commission of Texas, by May 28, 2007. Requests for further information should be mailed to the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission's Office of Customer Protection at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989.

TRD-200701727



Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 30, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of State Power Company, Inc. for Retail Electric Provider (REP) Certification, Docket Number 34220 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 18, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket No. 34220.

TRD-200701720

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: May 2, 2007



Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On April 25, 2007, Lightyear Network Solutions, LLC filed an application with the Public Utility Commission of Texas (Commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60353. Applicant intends to reflect a change in ownership/control.

The Application: Application of Lightyear Network Solutions, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34201.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 16, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34201.

TRD-200701716

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: May 2, 2007



Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On April 30, 2007, Ohio First Communications LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60772. Applicant intends to reflect a change in ownership/control.

The Application: Application of Ohio First Communications LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34221.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 16, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34221.

TRD-200701718

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: May 2, 2007



Notice of Application for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418

Notice is given to the public of an application filed with the Public Utility Commission of Texas on April 25, 2007, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418, respectively.

Docket Title and Number: Application of CT Cube, LP, doing business as West Central Wireless and doing business as Right Wireless, for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to P.U.C. Substantive Rule §26.418. Docket Number 34206.

The Application: The company is requesting ETC designation in the non-rural telephone company service area of Verizon Southwest. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as an ETC for service areas set forth by the commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by May 31, 2007. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 34206.

TRD-200701698

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 30, 2007



Notice of Application for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418

Notice is given to the public of an application filed with the Public Utility Commission of Texas on April 25, 2007, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418, respectively.

Docket Title and Number: Application of CGKC&H #2 Rural Limited Partnership, doing business as West Central Wireless and doing business as Right Wireless, for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to P.U.C. Substantive Rule §26.418. Docket Number 34207.

The Application: The company is requesting ETC designation in the non-rural telephone company service area of Verizon Southwest. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as an ETC for service areas set forth by the commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by May 31, 2007. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 34207.

TRD-200701699

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 30, 2007



Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on April 27, 2007, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.101, 36.001, and 37.154 (Vernon 1998 & Supp. 2006) (PURA).

Docket Style and Number: Joint Application of AEP Texas Central Company and LCRA Transmission Services Corporation to Transfer Certificate Rights and for Approval of Transfer of a Facility in Uvalde, Kinney, and Val Verde Counties, Docket Number 34216.

The Application: This transaction involves the transfer from AEP Texas Central Company to LCRA Transmission Services Corporation (collectively, Applicants) of a transmission facility and associated certificate of convenience and necessity (CCN) rights. The transmission facility proposed for transfer is the rebuilt Uvalde to Hamilton Road transmission line segment located in Uvalde, Kinney, and Val Verde Counties. AEP Texas Central Company owns the existing transmission facility located in these counties, which is being rebuilt to increase transmission power capacity necessary to continue reliable transmission service in this area. Approval of this application will enable LCRA Transmission Services Corporation to include approximately \$26.2 million of new transmission assets in its transmission plant and subsequently request rate treatment for the new transmission assets, most likely through an interim capital addition filing.

AEP Texas Central Company is retiring approximately 67.6 miles of existing 138-kV transmission line from Uvalde to Hamilton Road that is constructed on wood poles in an H-frame configuration. The new line is being rebuilt with primarily single pole, steel structures upgraded to 795 ACSR conductor and continued operation at 138-kV.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 34216.

TRD-200701705

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 30, 2007



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 26, 2007, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of US Cable Telecom of Texas, LLC for a Service Provider Certificate of Operating Authority, Docket Number 34209 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service and long distance services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 16, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34209.

TRD-200701717
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 2, 2007



Notice of Application to Amend Certificated Service Area Boundaries in Oldham County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 23, 2007, for a service area exception to amend certificated service area boundaries within Oldham County, Texas.

Docket Style and Number: Application of Deaf Smith Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for an Electric Service Area Exception within Oldham County. Docket Number 34191.

The Application: Deaf Smith Electric Cooperative, Inc. seeks to provide service to a specific customer located within the certificated service area of Southwestern Public Power Company, doing business as Xcel Energy (SPS). SPS is in full agreement with the territory amendment.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than May 18, 2007 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34191.

TRD-200701700

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 30, 2007



Notice of Petition for Rulemaking

Notice is given to the public of a petition for rulemaking filed with the Public Utility Commission of Texas on April 25, 2007.

Docket Style and Number: Petition of Texas Grain and Feed Association to Amend Subst. R. §25.214(d) by Adopting a Definition of Retail Seasonal Agricultural Customer; Docket Number 34204.

The Petition: On April 25, 2007, Texas Grain and Feed Association (TGFA) filed with the Public Utility Commission of Texas a petition to amend P.U.C. Substantive Rule §25.214(d) by adopting a definition of Retail Seasonal Agricultural Customers. This petition for rulemaking is filed pursuant to Texas Government Code §2001.021(a) and P.U.C. Procedural Rule §22.281(a).

TGFA requested that the Commission revisit the manner in which the electric utilities in the Electric Reliability Council of Texas (ERCOT) have implemented the tariffs related to the seasonal agricultural exemption from the 80% billing demand ratchet in accordance with the Commission's Final Orders in the unbundling dockets that established the transmission and distribution rates and tariffs prior to market restructuring. TGFA asserted that the tariffs do not define "retail seasonal agriculture customers", and as a result there is inconsistency between the utilities in application of the exemption. TGFA stated that the proposed amendment to P.U.C. Substantive Rule §25.214(d), Pro-forma Retail Delivery Tariff, Figure: 16 TAC §25.214(d)(1), Chapter 1 Definitions, would resolve the inconsistency between utilities and ensure that all seasonal agriculture customers fall within the exemption. TGFA requested that the Commission amend its Substantive Rules which include the Pro-forma Retail Delivery Tariff to include the following definition of "Retail Seasonal Agricultural Customers": Chapter 1: Definitions RETAIL SEASONAL AGRICULTURAL CUSTOMERS. Customers that are primarily engaged in producing crops, or performing services on crops subsequent to their harvest with the intent of preparing or storing them for market or further processing, including, but not limited to cotton ginnery, and rice and grain dryers.

TGFA added that the omission of a definition in the pro-forma retail delivery tariffs as established by PUC rules has led to discriminatory treatment of retail seasonal agricultural customers based simply on the location of their facilities and has resulted in some customers being charged amounts in excess of the authorized tariff for service.

Texas Grain and Feed is seeking uniformity between all Transmission and Distribution Utilities by proposing a rule amendment to Chapter 1 of the pro forma tariff because the definitions in Chapter 1 are applicable to the company specific rate schedules and riders found in Chapter 6.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by June 1, 2007, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34204.

TRD-200701721

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**Public Notice of Workshop and Request for Comments on
Rulemaking to Repeal P.U.C. Substantive Rules §25.53 and
§26.51 and Adopting New Rule Relating to Emergency
Operations Plan Under New Chapter 29**

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding its proposed rulemaking to amend P.U.C. §25.53 - Emergency Operations Plan and §26.51 - Continuity of Service, on June 1, 2007, in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. This rulemaking project will be established to make necessary changes to emergency operations plans for electric and telecommunications providers to ensure preparedness during natural and manmade disasters. Project Number 34202, *Rulemaking Project to Repeal P.U.C. Substantive Rules §25.53 and §26.51 and Adopting New Rule Relating to Emergency Operations Plan Under New Chapter 29*, has been established for this proceeding. Prior to the workshop, the commission requests interested persons file comments to the following questions:

Electric Utilities

§25.53. Emergency Operations Plan.

Subsection (a) - Filing Requirements

Who should be required to file an emergency operations plan, *i.e.*, generation owners, qualified scheduling entities (QSE), transmission operators, and/or retail electric providers (REP)?

Subsection (c) - Information to be Included in the Plan

1. What information should be included in the emergency operations plans? Should there be a standardized outline for the plans?

2. In addition to the current information included in the plan, commission staff would like to propose the addition of other specific items. These include the following:

- a. A detailed description of procedures regarding registry of critical care customers and restoration priorities.
- b. A copy of any mutual aid requirements with other utilities or vendors that would be carried out during an emergency situation.
- c. The classification of businesses such as Wal-Mart, Home Depot, and other businesses vital to the economy as Critical Care Industrial Customers to facilitate more rapid restoration of service.
- d. A copy of each utility's pandemic plan for the complete plan and a description of a utility's pandemic plan and preparedness efforts for the public document.
- e. A copy of each utility's hurricane plan in the complete plan and a brief synopsis for the public document. (This applies to utilities in hurricane prone areas).
- f. A copy of each utility's business continuity plan (BCP) in the complete plan and a summary of the BCP in the public document.
- g. A status report of compliance with National Incident Management System (NIMS) training requirements.

3. Should an emergency operations plan have any minimum physical security level requirements as set forth in the North American Electric Reliability Corporation's Standards?

4. Should the Electric Reliability Council of Texas be required to file a plan?

5. Please describe any concerns you may have with adding the above items to your plan.

Telecommunications Providers

§26.51. Continuity of Service.

Subsection (g) - Emergency Operations Plan

1. Who should be required to file, *i.e.*, incumbent local exchange carriers (ILEC) only, ILECs and facilities-based competitive local exchange carriers (CLEC), and/or all facilities-based providers?

2. In addition to the existing items included in a utility's plan, several suggested items should be added to an updated plan. These include the following:

- a. A detailed description of procedures regarding registry of essential service customers and restoration priorities.
- b. A copy of any mutual aid requirements with other utilities or vendors that would be carried out during an emergency situation.
- c. The classification of businesses such as Wal-Mart, Home Depot, and other businesses vital to the economy as essential service customers to facilitate more rapid restoration during an outage.
- d. A copy of a utility's pandemic plan for the complete plan and a description of a utility's pandemic plan and preparedness efforts for the public document.
- e. A copy of a hurricane plan in the complete plan and a brief synopsis for the public document. (This applies to utilities in hurricane prone areas).
- f. A copy of each utility's BCP in the complete plan and a summary of the BCP for the public document.

3. Please describe any concerns you may have with adding the above items to your plan.

General Comments

1. Should a utility file a complete copy of its emergency operations plan? Should a utility file a complete copy of its emergency operations plan confidentially with a summary that is available to the public? Should these be filed on an annual basis, or should the commission retain an original filing accompanied by annual updates?

2. Commission staff believes that a complete copy of an emergency operations plan should be on file for each utility. Central Records has a current procedure for handling confidential information. Is this procedure adequate for safeguarding emergency operations plans?

3. Should the utilities be required to file (electronically) their emergency contact personnel information at a minimum annually?

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by May 29, 2007. Parties are also encouraged to submit proposed rule language along with their responses to the questions above. All responses and proposed rule language should reference Project Number 34202. Please be sure label your responses by noting the specific question numbers. A copy of the above questions will also be available in Central Records and on the PUC website under Project Number 34202.

The commission requests that persons planning on attending the workshop register by phone with Katie Rich, Infrastructure Reliability Division, (512) 936-7392.

Questions concerning the workshop or this notice should be referred to Katie Rich, Infrastructure Policy Analyst and Homeland Security Assistant, Infrastructure Reliability Division, (512) 936-7392, Gordon Van Sickle, Senior Network Analyst, Infrastructure Reliability Division, (512) 936-7343, or Larry Reed, Senior Fuel Analyst, Infrastructure Reliability Division, (512) 936-7357. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200701722

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: May 2, 2007



Stephen F. Austin State University

Notice of Consultant Contract Amendment

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of amendment of the University's contract with consultant Dr. Marianne Schmulde, 1230 Wright Circle #307, Celebration, Florida 34747. The original contract was in an amount not to exceed \$45,000, and the Notice of Award was published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10986). The contract has been amended to include evaluation of the CERT-Prep Project beginning on October 1, 2006 and terminating on September 30, 2007, with a total amount not to exceed \$13,000, excluding travel and per diem.

Documents, films, recording, or reports of intangible results may be presented by the outside consultant. Services will be on an as needed basis.

All inquiries should be directed to Marie Davenport, Coordinator for the CERT-Prep Project, Stephen F. Austin State University, P.O. Box 6103, SFA Station, Nacogdoches, TX 75962; email: davenportmk@sfasu.edu; phone (936) 468-1851.

TRD-200701601

R. Yvette Clark

General Counsel

Stephen F. Austin State University

Filed: April 27, 2007



Texas A&M University System, Board of Regents

Notice of Sale of Oil, Gas, and Sulphur Lease

The Board of Regents of the Texas A&M University System, pursuant to provisions of V.T.C.A., Education Code, Chapter 85, as amended, and subject to all rules and regulations promulgated by the Board of Regents, offers for sale at public auction in Suite 1151, System Real Estate Office, The Texas A&M University System, A&M System Building, 200 Technology Way, College Station, Texas, at 10:00 a.m., Wednesday, June 6, 2007, an oil, gas and sulphur lease on the following described land in Dickens County, Texas. The property offered for lease contains 575.10 mineral acres, more or less, and more particularly described as follows:

All of the North Half (N/2) of Section 222; and All of the South Half (S/2) of Section 247, less and except the North Half of the Southwest

Quarter (N/2 SW/4) in all covering 575.10 acres, more or less, Dickens County, Texas.

The minimum lease terms, which apply to this tract, are as follows:

- (1) Bonus: \$155 per net mineral acre
- (2) Royalty: 25%
- (3) Delay Rental: \$10.00 per net mineral acre
- (4) Primary term: Three (3) years
- (5) Net Mineral Acres: 575.10 (More or Less)

Highest bidder shall pay to the Board of Regents on the day of the sale 25% of the bonus bid, and the balance of the bid shall be paid to the Board within twenty-four (24) hours after notification that the bid has been accepted. All payments shall be in cashier's check as the Board may direct. Failure to pay the balance of the amount bid will result in forfeiture to the Board of the 25% paid. The Board of Regents of the Texas A&M University System, **RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS**. The successful bidder will be required to pay all advertising expenses and administrative costs.

Further inquiries concerning oil, gas and sulphur leases on System land should be directed to:

Dan K. Buchly

Associate Vice Chancellor for Real Estate

The Texas A&M University System

System Real Estate Office

200 Technology Way, Suite 1151

College Station, Texas 77845-3424

(979) 458-6350

TRD-200701574

Vickie Burt Spillers

Executive Secretary to the Board

Texas A&M University System, Board of Regents

Filed: April 25, 2007



Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Sugar Land, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Sugar Land Regional Airport during the course of the next five years through multiple grants.

Airport Sponsor: City of Sugar Land, Sugar Land Regional Airport. Scope: Provide engineering/design services to include but not limited to Preliminary Engineering Report, Preliminary and Final Design, Bidding, Construction Administration, and Closeout for current and future projects. Engineering/design services may also include but are not limited to conducting surveys, geotechnical investigations, preparing engineering reports, drainage studies, preparing construction plans and specifications, bid tabulations, and other services as required by TxDOT Aviation Division's professional services agreement.

Current Project: TxDOT CSJ No.:0712SGRLD. Standby power facilities for airfield operations and terminal building operations.

The DBE goal for the current project is race neutral. TxDOT Project Manager is Bijan Jamalabad, P.E.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Portland Cement Concrete Pavement Rehabilitation of Runway 17-35, Parallel Taxiway "F", stub taxiways, Taxiway "H", and Based Pilot's Center Apron - PCC pavement rehabilitation could include spall repair, joint and crack sealing, slab jacking, and panel replacement.
2. Replace existing HIRL with new HIRL Runway 17-35.
3. Paved Shoulders Runway 17-35.
4. Relocate Existing Parallel Taxiway to Meet Design Separation Standards
5. Replace existing MITL with new MITL on parallel Taxiways and Taxiway "F."
6. Land Acquisition.
7. Airport Drainage Improvements including Update to Drainage Master Plan.
8. Perimeter Security Fence.
9. ARFF Station.
10. Medium Intensity Approach Lighting System (MALSR).
11. Pavement Evaluation with Improvement Recommendations.
12. Update Airport Layout Plan to Current Advisory Circular Standards - ALP update to include Land Use Plan and Terminal Area Plan.
13. Airport Master Plan Update.

The city of Sugar Land reserves the right to determine which of the above scopes of services may or may not be awarded to the successful firms and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and sponsor's criteria are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Sugar Land Regional Airport." The proposal should address a technical approach for the current and future scope. Firms may add two additional optional summary pages to provide their approach for the future scope. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address www.dot.state.tx.us/forms/aviation/550.doc. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Firms may add two additional optional summary pages to provide their approach for the future scope. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY

OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

A pre-proposal meeting concerning this project will be held on May 17, 2007 at 2:00 PM at the Sugar Land Regional Airport 12888 Highway 6 South, Sugar Land, Texas 77478. Attendance at this pre-proposal meeting is not mandatory; however, this will be the only opportunity for an escorted tour of the airport. Interested firms should make every attempt to attend this meeting.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than Tuesday, June 5, 2007, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Amy Slaughter, Grant Manager. For technical questions, please contact Bijan Jamalabad, Project Manager.

TRD-200701694

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: April 30, 2007

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Texas Youth Commission

Notice of Consultant Contract Award

Pursuant to provisions of Government Code, Chapter 2254, the Texas Youth Commission (TYC) furnishes this notice of consultant contract award. The American Correctional Association (ACA) will conduct a thorough analysis of TYC's health care delivery system, with a focus on access to health care, quality of health care, quality controls, and health care oversight structure and functions. ACA will provide technical assistance to TYC.

The contract was awarded to the American Correctional Association, James A. Gondles, Jr., Executive Director, 206 North Washington, Suite 200, Alexandria, Virginia 22314, for an amount not to exceed \$100,000.

The term of the contract is April 12, 2007 through August 31, 2007.

The consultant will provide a report on the findings and make recommendations based on the time allotted for Phase One as well as technical assistance at Phase Three.

TRD-200701573

Katherine Knight
Acting General Counsel
Texas Youth Commission
Filed: April 25, 2007

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How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).